

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia.

OCTOBER TERM, 1918

No. 3225

538

No. of Special Calendar
January Term 1919

LESLIE C. STALLINGS, APPELLANT,

vs.

MAURICE SPLAIN, UNITED STATES MARSHAL IN AND
FOR THE DISTRICT OF COLUMBIA.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED NOVEMBER 15, 1918.

PRINTED JANUARY 10, 1919.

Court of Appeals of the District of Columbia.

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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
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Court of Appeals of the District of Columbia.

No. 3225.

LESLIE C. STALLINGS, Appellant,

vs.

MAURICE SPLAIN, U. S. Marshal, &c.

a Supreme Court of the District of Columbia.

No. 734. Habeas Corpus.

In the Matter of LESTER C. STALLINGS, Application for Writ of Habeas Corpus.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Application for Writ of Habeas Corpus.*

Filed June 11, 1918.

In the Supreme Court of the District of Columbia.

No. 734. Habeas Corpus.

In the Matter of LESTER C. STALLINGS, Application for Writ of Habeas Corpus.

To the Supreme Court of the District of Columbia:

Your petitioner, Lester C. Stallings, states as follows:

1st. That he is a citizen of the United States, and that he is a resident of the District of Columbia;

2nd. That on the 10th day of June, A. D. 1918, he was arrested in the District of Columbia by the United States Marshal in and for the said District, but not in response to any warrant issued in the District of Columbia, but on a warrant issued by the United States

District Court for the District of Wyoming—the purpose of said warrant being to require him to appear in the said United States Court for the District of Wyoming and there answer an indictment charging him with embezzlement;

3rd. That his arrest as aforesaid was not made in pursuance to any judicial proceeding in the District of Columbia whatsoever; that he has not been accorded due process of law as to notice of the alleged charges against him; that he is now, and will continue to be, illegally held in custody by the said United States Marshal of the District of Columbia unless and until granted the release herein prayed for;

Wherefore your petitioner prays that the Writ of Habeas Corpus be issued directing the United States Marshal for the District of Columbia to produce before this honorable court the body of your petitioner for a hearing according to law;

2 That upon such hearing an order be made releasing your petitioner from the custody of the said Marshal of the District of Columbia, or if that is not consistent, then bail be fixed in a reasonable sum for his release from custody pending such further hearing as the facts herein set forth may render meet and proper.

LESLIE C. STALLINGS,
Petitioner.

Subscribed and sworn to before me this the 11th day of June, A. D. 1918.

J. R. YOUNG, *Cl'k*,
By F. E. CUNNINGHAM,
Ass't Cl'k.

Fiat.

Let the writ issue as prayed—returnable before me forthwith.

WALTER I. McCOY,
Chief Justice.

Writ of Habeas Corpus.

Filed June 11, 1918.

* * * * *

The President of the United States to Maurice Splain, U. S. Marshal,
Greeting:

You are hereby commanded to have the body of Lester C. Stallings detained under your custody, as it is said, together with the day and cause of his being taken and detained, by whatever name he may be called in the same, before the Honorable Walter I. McCoy, Chief Justice of the Supreme Court of the District of Columbia, in Criminal Court No. 2, Emery Building, City of Washington (immediately),

3 after the receipt of this writ, to do and receive whatever shall then and there be considered of in his behalf, and have then and there this writ.

Witness, The Honorable Walter I. McCoy, Chief Justice of said Court, the 11th day of June, A. D. 1918.

[SEAL.]

J. R. YOUNG,
Clerk,

By F. W. SMITH,
Assistant Clerk.

Marshal's Return.

Service accepted this 11th day of June, 1918.

MAURICE SPLAIN,
U. S. Marshal, D. C.

Return of Maurice Splain, U. S. Marshal.

Filed July 16, 1918.

* * * * *

Now comes Maurice Splain, United States Marshal for the District of Columbia, by whom service of the writ of habeas corpus herein was accepted, respondent, and for return thereto states:

1. That on the 10th day of June, 1918, in the District of Columbia, he arrested the petitioner herein, under and by virtue of a bench warrant issued out of the District Court of the United States for the District of Wyoming, a copy whereof is hereto annexed and made part hereof, in which said warrant petitioner is described by the name of Leslie C. Stallings, and thereupon so admitted his name to be, and for a time detained petitioner pending the institution of proceedings for the removal of said petitioner to the District of Wyoming for trial before the District Court of the United States for said District of Wyoming, upon the charges in said warrant mentioned.

4 2. That petitioner remained in the custody of respondent from the time of his arrest as aforesaid until the 11th day of June, 1918, when, in obedience to said writ, respondent produced the body of petitioner before the Honorable Walter I. McCoy, Chief Justice of this Honorable Court, by whom, on motion by Petitioner, this proceeding was continued for hearing at a future time, and petitioner was released under bail bond in the sum of \$2,000, conditioned for his future appearance herein, for which reason, and because of the matters hereinafter recited, respondent is now unable to have said petitioner here in Court.

3. That subsequently, on the 27th day of June, 1918, complaint was duly made before Isaac R. Hitt, Esquire, a United States Commissioner for the District of Columbia, charging petitioner with the commission of the offenses mentioned in said warrant, whereupon said Isaac R. Hitt, United States Commissioner as aforesaid, duly

issued his warrant for the arrest of said petitioner; and thereafter, on the 5th day of July, 1918, petitioner vountarily appeared before the said Isaac R. Hitt, United States Commissioner as aforesaid, in said District, for hearing, and submitted himself to the custody of this respondent; whereupon, petitioner having admitted his identity and former official character as described in said complaint and having entered thereto a plea of not guilty, the United States, on its part, produced a duly certified copy of the indictment pending against petitioner in the District Court of the United States for the District of Wyoming mentioned in the bench warrant of which a copy is hereto annexed, the original bench warrant aforesaid, and certain correspondence from the U. S. Marshal for the District of Wyoming

5 to the U. S. Marshal for this District, all of which were admitted in evidence without objection by petitioner; and thereupon, petitioner, by his attorney, William B. Jaynes, Esq., announced that he would offer no evidence on his part, but moved that petitioner be discharged, which said motion, after argument, was denied; whereupon, petitioner, with the advice of his counsel, requested to be admitted to bail for his appearance in the District Court of the United States for the District of Wyoming, on the first day of the next term thereof, and was thereupon admitted to bail, in the sum of \$2,000, for his appearance therein as aforesaid, with George W. Ray as surety.

Wherefore, having made full and certain return to the writ herein, respondent prays that the petition herein be dismissed and the writ discharged.

MAURICE SPLAIN,
U. S. Marshal, D. C.

Maurice Splain, being first duly sworn, on his oath says that he has read the foregoing return by him subscribed, that he is acquainted with the contents thereof, and that he verily believes the statements of fact therein made to be true.

MAURICE SPLAIN.

Subscribed and sworn to before me this 16th day of July, 1918.
[SEAL.]

JAMES A. C. PALMER,
Notary Public, D. C.

JOHN E. LASKEY,
United States Attorney, D. C.,
By JAMES B. ARCHER.

6 THE UNITED STATES OF AMERICA,
District of Wyoming:

The President of the United States of America to the United States Marshal of the District of Wyoming, Greetings:

You are hereby commanded that you take the body of Leslie C. Stallings if he shall be found in your District, and safely him keep, so that you have his body before the District Court of the United

States, for the District of Wyoming, at the building used as an United States Court House, in the City of Cheyenne, in said District, forthwith, to answer unto the United States of America, in a certain bill of Indictment, preferred against him in said Court for violation of Sec. 97 F. P. C. 1910. Embezzlement of moneys in connection with land office matters. (8 counts.)

And have you then and there this writ, with due return thereon endorsed.

[SEAL.] Witness, The Honorable John A. Riner, Judge of the said District Court, and the seal thereof, at the City of Cheyenne, in said District, this 15th day of May, A. D. 1918, and of the Independence of the United States the 142nd year.

CHARLES J. OHNHAUS,
Clerk,
By FLORENCE BRADLEY,
Deputy Clerk.

And on the back thereof the words and figures following:

“No. 906. District Court of the United States, District of Wyoming. The United States of America vs. Leslie C. Stallings.
7 Bench Warrant. The defendant may be let to bail before an United States Commissioner, in the sum of \$2,000.00. Charles J. Ohnhaus, Clerk. C. L. Rigdon, United States District attorney.”

Petition for Writ of Certiorari.

Filed July 18, 1918.

* * * * *

To the Honorable Court:

Your petitioner, Leslie C. Stallings, respectfully avers and shows the Court that he was arrested by the United States Marshal in and for the District of Columbia on June 10, 1918, by virtue of what purported to be a bench warrant issued by the United States District Court in and for the District of Wyoming, and which warrant charged embezzlement; that on June 11, 1918, your petitioner sued out a writ of habeas corpus in the Supreme Court of the District of Columbia, was ordered released from prison on the giving of bail in the sum of \$2,000 to await further hearing on the said charge of embezzlement, and that before a final hearing and full determination of that application by the Supreme Court of the District of Columbia and on July 5, 1918, your petitioner was again arrested by the United States Marshal for the District of Columbia in response to the commands of a bench warrant issued by Isaac R. Hitt, a United States Commissioner in and for the District of Columbia, and that said last

named warrant charged embezzlement committed in the United States Judicial District of Wyoming, and that after a hearing before the said United States Commissioner on July 5, 1918, your petitioner

8 was ordered committed for extradition in default of bail in the sum of \$2,000 for his appearance before the United States

District Court in and for the District of Wyoming, and in order to avoid immediate imprisonment bail was given as suggested by the Commissioner. Your petitioner further avers that the said warrant of arrest by the said United States Commissioner was in truth and in fact for exactly the same counts and charges as those under which your petitioner was arrested on June 10, 1918, and under which charges his said writ of habeas corpus was applied for and granted, and which had not been finally disposed of by the Supreme Court of the District of Columbia and the final disposition of which still awaits before this Honorable Court. Your petitioner avers that he does not believe that the said United States Commissioner acted within his legal powers in issuing the said warrant of arrest, in hearing evidence and argument in the matter, in ordering petitioner's commitment if bail should not be given, and therefore your petitioner believes that all of the said Commissioner's actions, decrees, and orders of every kind and character whatsoever are wholly void and of no effect, because petitioner's application in habeas corpus was then pending in full force, power, and effect in this Honorable Court, because no final hearing and conclusion as to the merits thereof had been reached in this Court. Your petitioner further avers that he is not guilty of the crime charged, that he believes the allegations set forth in the respective warrants and in the certified copy of the indictment under which the last said warrant was issued by the said United States Commissioner do not legally charge a crime within the provisions and meaning of any statute of the United States; that he

9 believes the Supreme Court of the District of Columbia has exclusive jurisdiction of your petitioner until his said application is fully disposed of by it, and that so believing he alleges that all of the proceedings before the said United States Commissioner are wholly null, void, and of no effect whatsoever, and that he is in law entitled to be released wholly from the purported power, force, and effect of said proceedings.

All the premises being duly considered, your petitioner prays this Court that an order be issued directing the Clerk of the Supreme Court of the District of Columbia to issue a writ of certiorari to the said Isaac R. Hitt, a United States Commissioner in and for the District of Columbia, returnable July 23, 1918, at 10 o'clock in the forenoon directing the said Commissioner to send to this Honorable Court all of the papers of whatsoever kind or character connected in and with the arrest, hearing, order of commitment or bond of your petitioner under the charge of embezzlement in the hearing as conducted by him on July 5, 1918, including certified copy of indictment and petitioner's motion for rehearing, as by statute in such

cases made and provided for use in connection with petitioner's hearing for final discharge on habeas corpus as prayed for in original petition.

LESLIE C. STALLINGS,
Petitioner.

DISTRICT OF COLUMBIA:

Personally appeared before me Leslie C. Stallings, who after being by me duly sworn according to law says:

I have read the foregoing petition by me signed. The said application for a writ of certiorari is not made for purposes of delay, and I verily believe that I have a meritorious defense in law to the charge of embezzlement as set forth in my foregoing petition.

LESLIE C. STALLINGS.

Subscribed and sworn to before me this the 18th day of July, 1918.

J. R. YOUNG,
Clerk,

By F. W. SMITH,
Ass't Clerk.

10 DISTRICT OF COLUMBIA:

I do solemnly swear that I have read the foregoing petition by me signed, and that I know full well the contents thereof; and the statement of facts therein made as upon personal knowledge are true, and those made upon belief I believe to be true.

LESLIE C. STALLINGS.

Subscribed and sworn to before me this the 18th day of July, 1918.

J. R. YOUNG,
Clerk,

By F. W. SMITH,
Ass't Clerk.

WILLIAM B. JAYNES,
Attorney for the Petitioner, Leslie C. Stallings.

Jurat.

Filed July 18, 1918.

* * * * *

To the Supreme Court of the District of Columbia:

Now comes Leslie C. Stallings, the original petitioner in the above styled and numbered cause, and alleges, affirms, and prays this Honorable Court as follows:

1st. That the original application in this said cause was filed on June 11th, 1918, as shown by Habeas Corpus docket in and for the

Supreme Court of the District of Columbia, the said application being numbered 734, and that your said affiant was released on bail in the sum of \$2,000 to await a hearing on the merits July 2nd, 1918; that on the 2nd day of July, 1918, when the said cause came on for hearing in the Supreme Court of the District of Columbia an order of continuance was granted by the Honorable Justice Hitz, and the hearing fixed for 10 o'clock A. M., July 16th, 1918.

2nd. That before the final disposition of affiant's application for Habeas Corpus and on July 5th, 1918, he was arrested by the
11 United States Marshal in and for the District of Columbia on a warrant issued on or about June 27th, 1918, by Isaac R. Hitt, a United States Commissioner in and for the District of Columbia, and that after a hearing before the said Commissioner on July 5th, 1918, the said Commissioner ordered the commitment of your affiant, and that in order to avoid being placed in prison your affiant then and there gave bond in the sum of \$2,000 in accordance with the direction of the said United States Commissioner.

3rd. That the issuance of the warrant by the said United States Commissioner and all of the proceedings thereunder before him embraced the same state of facts and grew out of the same alleged transactions and are based upon the same indictment as is now involved in the hearing before this Honorable Court. Your affiant, therefore, believes that the issuance of the said warrant of arrest, his arrest thereunder, and all actions and orders of the United States Commissioner made in said matter before him and during the pendency of this application and before its complete and final disposition by the Supreme Court of the District of Columbia were null, void, and of no legal effect whatsoever, and therefore on the 8th day of July, 1918, your said affiant filed an affidavit with the said United States Commissioner setting forth in full the pendency of affiant's application for final release on Habeas Corpus, and asking said Commissioner to enter an order making of no effect his previous actions and orders to await the termination on the merits of affiant's application for discharge on Habeas Corpus. The United States Commissioner denied the request of affiant; and your affiant now prays this Honorable Court for an order declaring all of the proceedings and orders and
actions taken thereunder by the United States Commissioner
12 to be null, void, and of no effect whatsoever, because your said affiant has been continually since June 11th, 1918, in the legal custody of the Supreme Court of the District of Columbia, and will so remain in the absolute and exclusive control of said Court until his said application for release on Habeas Corpus is finally disposed of.

4th. That the warrant on which your affiant was arrested on June 10th, 1918, and the insufficiency of which is alleged by your affiant, states that the indictment herein was based on Section 97 of the Criminal Code of the United States, and the allegation in the certified copy of the indictment in the said cause, and which copy was not available for inspection by your affiant on June 11th, when the application for Habeas Corpus was filed, recites that certain moneys were received by your affiant while Acting as United States Commis-

sioner, and while so acting that said respective sums as alleged were embezzled by him. Your affiant states that he does not believe that he was an officer of the United States, or an assistant to any such officer, within the meaning of Section 97 of the Criminal Code of the United States while acting as such United States Commissioner, but that he was an officer of the Court under which he held the appointment as United States Commissioner.

5th. That neither the said warrant nor the certified copy of the indictment does with sufficient particularity set out and describe the acts which constitute a charge of embezzlement, because there is no sufficient allegation as to the ownership of the moneys alleged to have been embezzled, and the ownership is neither alleged in the names of the respective parties from whom the moneys were received nor in the receiver of the United States Land Office at Cheyenne, Wyoming, nor in the United States.

13 6th. You- said affiant further avers that he does not believe that while acting as United States Commissioner he was in any sense an officer to receive money from persons in any way indebted to the United States for the use and benefit of the United States, and, therefore, he does not believe that the said warrant and indictment in any way or manner charges a crime against any statute or law of the United States; and that if any money were received by him from any of the parties named in the said indictment (and which receipt and retention thereof he denies) for the purposes named in said indictment then the said sums were received by him in a private capacity and not as any officer of the United States, nor as an assistant to any officer of the United States, nor as an officer of any court of the United States.

LESLIE C. STALLINGS.

Sworn to and subscribed before me on this the 16th day of July, A. D. 1918.

JOHN R. YOUNG,
Clerk,

By W. F. LEMON,
Ass't Cl'k.

Order for Writ of Certiorari.

Filed July 18, 1918.

* * * * *

The petition for a writ of Certiorari as prayed for in the above entitled and numbered cause having — duly considered by the Court the same is hereby approved, and the Clerk of this Court will proceed to issue the writ as requested in applicant's petition.

F. L. SIDDONS,
Justice.

July 18, 1918.

WILLIAM B. JAYNES,
Attorney for Petitioner.

Filed July 20, 1918.

Writ of Certiorari, Issued July 18th, 1918.

The President of the United States to Isaac R. Hitt, U. S. Com'r,
Greeting:

For sufficient reasons shown by the petition in this case you are hereby commanded to certify and send to this Court, on or before July 23d, 1918, at 10 o'clock A. M., your proceedings in the case of Lester C. Stallings with all things touching the same, as fully and entirely as it remains before you, by whatsoever names the parties may be called in said proceedings, together with this writ, that said Court may cause to be done what of right ought to be done in the premises.

Witness, the Honorable Walter I. McCoy, Chief Justice of said Court, the 18th day of July, A. D. 1918.

[SEAL.]

J. R. YOUNG,
Clerk,

By F. W. SMITH,
Assistant Clerk.

(Endorsed:) Return July 19, 1918, to said Writ Herewith filed.
Isaac R. Hitt, U. S. Commissioner.

In the U. S. Commissioner Court of the District of Columbia.

No. 184.

UNITED STATES OF AMERICA, Plaintiff,

vs.

LESLIE C. STALLINGS, Defendant.

Action for Violation Sec. 97 of U. S. Penal Code.

Proceedings.

Date. 1918.

June 27. Complaint filed—Issued Warrant of arrest.

July 5. Hearing—arraignment of prisoner.

Certified Copy of Indictment, original Bench Warrant & 2
Letters from Dist. of Wyoming.

“ 5. Found probable ground to believe said defendant guilty as
charged.

“ 5. Bond \$2,000—George W. Ray, Surety.

July 8. Motion filed & affidavit, & application for Vacating of proceedings & orders. Denied by Commissioner.

July 19. Return made to Writ by U. S. Commissioner Hitt,

When the annexed writ of certiorari was received, whereby the proceedings before this Court stopped.

DISTRICT OF COLUMBIA, ss:

The Honorable Commissioner of the U. S. Commissioner Court, D. C., by virtue of the annexed writ, to said court delivered, do hereby certify the record and proceedings in the suit in the writ mentioned, unto the Supreme Court of the District of Columbia, together with all things touching the same, as fully and wholly as the same are now depending before said Commissioner's Court.

Witness the Honorable Commissioner of said U. S. Commissioner Court, this 19th day of July, A. D. 1918.

[SEAL.]

ISAAC R. HITT,
U. S. Commissioner for the District of Columbia.

16 (United States Commissioner's Blanks, No. B.)

Warrant to Apprehend.

The President of the United States of America to the Marshal of the United States for the District of Columbia and to His Deputies, or Any or Either of Them:

Whereas, Frank M. Helan has made complaint in writing under oath before me, the undersigned, a United States Commissioner for the District of Columbia charging that Leslie C. Stallings late of Town of Encampment, in the State of Wyoming did, on or about the sundry dates set out in attached copy Affidavit of Complaint which is made a part hereof, in violation of Section 97 of U. S. Penal Code in the State and district of Wyoming unlawfully convert to his own use and fraudulently embezzle eight certain sums of money, as is more fully set forth in certified copy of Affidavit of Complaint filed herein, which is attached hereto and made a part hereof contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Leslie C. Stallings wherever found in your District, and bring his body forthwith before me or any other commissioner having juris-

diction of said matter, to answer the said complaint, that he may then and there be dealt with according to law for the said offense.

Given under my hand and seal this 27th day of June, A. D. 1918.

[SEAL.]

ISAAC R. HITT,

United States Commissioner as Aforesaid. [SEAL.]

Approved:

JOHN E. LASKEY,

United States Attorney, District of Columbia,

By GLENN WILLETT,

Designated Assistant.

17 (Endorsed:) United States District Court. The United States of America vs. Leslie C. Stallings. Warrant to Apprehend. Issued 27 day of June, 1918. Returned and filed 6 day of July, 1918. Isaac R. Hitt, U. S. Commissioner.

Return.

Received this Warrant on the 5th day of July, 1918, at Washington, D. C., and executed the same by arresting the within named Leslie C. Stallings, at Washington, D. C., on the 5th day of July, 1918, and have his body now in court, as within I am commanded.

MAURICE SPLAIN,

U. S. Marshal, District of Columbia,

Per F. L. HUDSON,

Deputy.

5th day of July, 1918.

18 UNITED STATES OF AMERICA,
District of Columbia, ss:

Before me, Isaac R. Hitt, a United States Commissioner for the District of Columbia aforesaid, personally appeared this day Frank M. Helan, who, being first duly sworn, deposes and says, that in violation of Section 97, of the Act of Congress approved March 4, 1909, commonly known and referred to as the Federal Penal Code of 1910, one Leslie C. Stallings, at the times hereinafter stated, in the State and District of Wyoming, and within the jurisdiction of the District Court of the United States for the District of Wyoming, did unlawfully, convert to his own use, and fraudulently embezzle divers sums of money, as hereinafter more particularly set forth, that is to say:

1st. That heretofore, to wit, on the seventh day of April, in the year of our Lord, one thousand nine hundred and seventeen, said Leslie C. Stallings, late of the Town of Encampment, in the State and District of Wyoming, and within the jurisdiction of the District Court of the United States for the District of Wyoming, being then being then and there a United States Commissioner in and for the Wyoming, duly appointed, qualified and acting as such United

States Commissioner, did by virtue and under color of his said office as United States Commissioner, and while he was so acting as such officer, receive and have in his possession and under his control certain moneys to a large amount, to wit, the amount of twenty eight dollars (\$28.00), which said moneys he, the said Leslie C. Stallings, had received as such United States Commissioner from one Ira O.

19 Wolfard to be paid over to the Receiver of the United States Land Office at Cheyenne, in the State and District of Wyoming, and he, the said Leslie C. Stallings, then and there the said moneys aforesaid did unlawfully convert to his own use and fraudulently embezzle.

2nd. That heretofore to wit, on the nineteenth day of February, in the year of our Lord one thousand nine hundred and seventeen, said Leslie C. Stallings, late of the Town of Encampment, in the State and District of Wyoming, and within the jurisdiction of the District Court of the United States for the District of Wyoming, being then and there a United States Commissioner in and for the District of Wyoming, duly appointed, qualified and acting as such United States Commissioner, did by virtue and under color of his said office as United States Commissioner, and while he was so acting as such officer, receive and have in his possession and under his control certain moneys to a large amount, to wit, the amount of twenty-two dollars (\$22.00), which said moneys he, the said Leslie C. Stallings, had received as such United States Commissioner from one Robert F. Jones to be paid over to the Receiver of the United States Land Office at Cheyenne, in the State and District of Wyoming, and he, the said Leslie C. Stallings, then and there the said moneys aforesaid did unlawfully convert to his own use and fraudulently embezzle.

3rd. That heretofore, to wit, on the second day of February, in the year of our Lord one thousand nine hundred and seventeen, said Leslie C. Stallings, late of the Town of Encampment, in the State and District of Wyoming, and within the jurisdiction of the District Court of the United States for the District of Wyoming, being then and there a United States Commissioner in and for the District of

20 Wyoming, duly appointed, qualified and acting as such United States Commissioner, did by virtue and under color of his said Office as United States Commissioner, and while he was so acting as such officer, receive and have in his possession and under his control certain moneys to a large amount, to wit, the amount of twenty-two dollars (\$22.00), which said moneys he, the said Leslie C. Stallings, had received as such United States Commissioner from one Ray G. Martin to be paid over to the Receiver of the United States Land Office at Cheyenne, in the State of and District of Wyoming, and he, the said Leslie C. Stallings, then and there the said moneys aforesaid, did unlawfully convert to his own use and fraudulently embezzle.

4th. That heretofore, to wit, on the fifth day of February, in the year of our Lord one thousand nine hundred and seventeen, said Leslie C. Stallings, late of the Town of Encampment, in the State

and District of Wyoming, and within the jurisdiction of the District Court of the United States for the District of Wyoming, being then and there a United States Commissioner in and for the District of Wyoming, duly appointed, qualified and acting as such United States Commissioner, did by virtue and under color of his said office as United States Commissioner, and while he was so acting as such officer, receive and have in his possession, and under his control certain moneys to a large amount, to wit, the amount of thirty-one dollars (\$31.00), which said moneys he, the said Leslie C. Stallings, had received as such United States Commissioner from one Hattie A. Tilton to be paid over to the Receiver of the United States Land Office at Cheyenne, in the State and District of Wyoming, and he, the said Leslie C. Stallings, then and there the said moneys
21 aforesaid did unlawfully convert to his own use and fraudulently embezzle.

5th. That heretofore, to wit, on the twentieth day of April, in the year of our Lord one thousand nine hundred and seventeen, said Leslie C. Stallings, late of the Town of Encampment, in the State and District of Wyoming, and within the jurisdiction of the District Court of the United States for the District of Wyoming, being then and there a United States Commissioner in and for the District of Wyoming, duly appointed, qualified and acting as such United States Commissioner, did by virtue and under color of his said office as United States Commissioner, and while he was so acting as such officer, receive and have in his possession and under his control, certain moneys to a large amount, to wit, the amount of twenty-two dollars (\$22.00), which said moneys he, the said Leslie C. Stallings, had received as such United States Commissioner from one Percy H. Goldsmith to be paid over to the Receiver of the United States Land Office at Cheyenne, in the State and District of Wyoming, and he, the said Leslie C. Stallings, then and there the said moneys aforesaid did unlawfully convert to his own use and fraudulently embezzle.

6th. That heretofore, to wit, on the first day of May, in the year of our Lord one thousand nine hundred and seventeen, said Leslie C. Stallings, late of the Town of Encampment, in the State and District of Wyoming, and within the jurisdiction of the District Court of the United States for the District of Wyoming, being then and there a United States Commissioner in and for the District of Wyoming, duly appointed, qualified and acting as such United States Commissioner, did by virtue and under color of his
22 said office as United States Commissioner, and while he was so acting as such officer, receive and have in his possession and under his control certain moneys to a large amount, to wit, the amount of twenty dollars and fifty cents (\$20.50), which said moneys he, the said Leslie C. Stallings, had received as such United States Commissioner from one Albert Anderson to be paid over to the Receiver of the United States Land Office at Cheyenne, in the State and District of Wyoming, and he, the said Leslie C. Stallings, then and there the said moneys aforesaid did unlawfully convert to his own use and fraudulently embezzle.

7th. That heretofore, to wit, on the twenty-fourth day of April, in the year of our Lord one thousand nine hundred and seventeen, said Leslie C. Stallings, late of the Town of Encampment, in the State and District of Wyoming, and within the jurisdiction of the District Court of the United States for the District of Wyoming, being then and there a United States Commissioner in and for the District of Wyoming, duly appointed, qualified and acting as such United States Commissioner, did by virtue and under color of his said office as United States Commissioner, and while he was so acting as such officer, receive and have in his possession and under his control certain moneys to a large amount, to wit, the amount of eight dollars (\$8.00), which said moneys he, the said Leslie C. Stallings, had received as such United States Commissioner from one Samuel S. Sage, to be paid over to the Receiver of the United States Land Office at Cheyenne, in the State and District of Wyoming, and he, the said Leslie C. Stallings, then and there the said moneys aforesaid, did unlawfully convert to his own use and fraudulently embezzle.

8th. That heretofore to wit, on the ninth day of May, in the year of our Lord one thousand nine hundred and seventeen, said
23 Leslie C. Stallings, late of the Town of Encampment, in the State and District of Wyoming, and within the jurisdiction of the District Court of the United States for the District of Wyoming, being then and there a United States Commissioner in and for the District of Wyoming, duly appointed, qualified and acting as such United States Commissioner, did by virtue and under color of his said office as United States Commissioner, and while he was so acting as such officer, receive and have in his possession and under his control certain moneys to a large amount, to wit, the amount of eight dollars (\$8.00), which said moneys he, the said Leslie C. Stallings, had received as such United States Commissioner from one Joseph R. Peryam to be paid over to the Receiver of the United States Land Office at Cheyenne, in the State and District of Wyoming, and he, the said Leslie C. Stallings, then and there the said moneys aforesaid did unlawfully convert to his own use and fraudulently embezzle.

Contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

(Signed)

FRANK M. HELAN.

Sworn to before me, and subscribed in my presence, this 27 day of June, A. D. 1918.

[SEAL.]

ISAAC R. HITT,

United States Commissioner as Aforesaid.

A true Copy:

ISAAC R. HITT, [SEAL.]

U. S. Commissioner, D. C.

(Endorsed.)

24 U. S. Commissioner Isaac R. Hitt will issue a warrant, on
the within complaint, for the arrest of Leslie C. Stallings.

(Signed)

JOHN E. LASKEY,

*Attorney of the United States in and
for the District of Columbia.*

THE UNITED STATES OF AMERICA

vs.

LESLIE C. STALLINGS.

Affidavit.

I hereby certify that the within is a true and correct copy of the
original affidavit on file.

[SEAL.]

ISAAC R. HITT,

U. S. Commissioner as Aforesaid.

25 (United States Commissioner's Blanks. No. F.)

Recognizance for Appearance Before U. S. Court.

UNITED STATES OF AMERICA,

District of Columbia, ss:

Be it remembered, That on this 5 day of July, A. D. 19-, before
me, Isaac R. Hitt, a United States Commissioner for the said District
of Columbia, personally came Leslie C. Stallings, Principal, and
George W. Ray, Surety, and jointly and severally acknowledged
themselves to owe the United States of America the sum of \$2,000
Dollars, to be levied on their goods and chattels, land and tenements,
if default be made in the condition following, to wit:

The Condition of this Recognizance is such, that if the said Leslie
C. Stallings Principal shall personally appear before the District
Court of the United States, in and for the District of Wyoming on
the 1st day of the next 1918 term to be begun and held at the City
of Cheyenne, at 10 o'clock A. M., and from time to time thereafter
to which the case may be continued and then and there answer the
charge of having, on or about certain sundry dates given below A. D.
1918, within said District, in violation of Section 97 U. S. Penal
Code unlawfully converted to his own use & fraudulently embezzled
certain sums of money received by him which moneys he received

as U. S. Commissioner to be paid over to the Receiver of U. S. Land Office at Cheyenne, Wyo., on following dates & of viz. am'ts:

26	Apr. 7/17	Rec'd \$28.	from Ira O. Wolfard
	Feb. 19/17	" 22.	" Robert F. Jones
	Feb. 2/17	" 22.	" Ray G. Martin
	Feb. 5/17	" 31.	" Hattie A. Tilton
	Apr. 20/17	" 22.	" Percy H. Goldsmith
	May 1/17	" 20.50	" Albert Anderson
	Apr. 24/17	" 8.	" Samuel S. Sage
	May 9/17	" 8.	" Joseph R. Peryam

and then and there abide the judgment of the said Court, and not depart without leave thereof; then this Recognizance to be void, otherwise to remain in full force and virtue.

LESLIE C. STALLINGS. [SEAL.]
G. W. RAY. [SEAL.]

Taken and acknowledged before me on the day and year first above written.

[SEAL.]

ISAAC R. HITT,
United States Commissioner, as Aforesaid.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Geo. W. Ray, a surety, on the annexed recognizance, being duly sworn, deposes and says that he resides at 3332 31st St. N. W. in the City of Washington, D. C., in said District, that he is a freeholder in the City of Washington, D. C., that he is worth the sum of \$50,000 Dollars, over and above all his just debts and liabilities, in property subject to execution and sale, and that his property consists of Real Estate in the District of Columbia, 3249 & 3251 M St. N. W.

(Affiant's Signature)

G. W. RAY.

Sworn to and subscribed before me this 5 day of July, A. D. 1918.

[SEAL.]

ISAAC R. HITT,
United States Commissioner, as Aforesaid.

(Endorsed:) United States District Court. The United States of America vs. Leslie C. Stallings. Recognizance for Appearance Before District Court. Filed on July 5, 1918.

28 UNITED STATES OF AMERICA,
District of Wyoming, ss:

Within the Eighth Judicial Circuit of the United States.

In the District Court of the United States for the District of Wyoming, said District being a part of and within the Eighth Judicial

Circuit of the United States, at a regular term of said District Court, begun and held at the City of Cheyenne, in the County of Laramie and State of Wyoming, in the District of Wyoming and Judicial Circuit aforesaid, on the thirteenth day of May, in the year of Our Lord one thousand nine hundred and eighteen.

The Grand Jurors of the United States of America, good and lawful men, summoned from the body of said District of Wyoming, within said Eighth Judicial Circuit of the United States, then and there being, and then and there being duly impaneled, sworn and charged by the court aforesaid, to diligently inquire and true presentment make for said District of Wyoming, in the name and by the authority of the United States, upon their oaths do find, charge and present:

First Count.

That heretofore, towit, on the seventh day of April, in the year of Our Lord one thousand nine hundred and seventeen, one Leslie C. Stallings, late of the Town of Encampment, in the State and District of Wyoming, and within the jurisdiction of this court, being then and there a United States Commissioner in and for the District of Wyoming, duly appointed, qualified and acting as such United States Commissioner, did by virtue and under color of his said office as United States Commissioner, and while he was so acting as such officer, receive and have in his possession and under his
29 control certain moneys to a large amount, towit, the amount of Twenty-eight dollars (\$28.00), which said moneys he, the said Leslie C. Stallings, had received as such United States Commissioner from one Ira O. Wolfard to be paid over to the Receiver of the United States Land Office at Cheyenne, in the State and District of Wyoming, and he, the said Leslie C. Stallings, then and there the said moneys aforesaid did unlawfully convert to his own use and fraudulently embezzle, against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

CHARLES L. RIGDON,

United States Attorney for the District of Wyoming.

Second Count.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and say:

That heretofore, towit, on the nineteenth day of February, in the year of Our Lord one thousand nine hundred and seventeen, one Leslie C. Stallings, late of the Town of Encampment, in the State and District of Wyoming, and within the jurisdiction of this court, being then and there a United States Commissioner in and for the District of Wyoming, duly appointed, qualified and acting as such United States Commissioner, did by virtue and under color of his said office as United States Commissioner, and while he was so acting

as such officer, receive and have in his possession and under his control certain moneys to a large amount, to-wit, the amount of Twenty-two dollars (\$22.00), which said moneys he, the said Leslie C. Stallings, had received as such United States Commissioner from one

30 Robert F. Jones to be paid over to the Receiver of the United States Land Office at Cheyenne, in the State and District of Wyoming, and he, the said Leslie C. Stallings, then and there the said moneys aforesaid did unlawfully convert to his own use and fraudulently embezzle, against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

CHARLES L. RIGDON,
United States Attorney for the District of Wyoming.

Third Count.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and say:

That heretofore, towit, on the second day of February, in the year of Our Lord one thousand nine hundred and seventeen, one Leslie C. Stallings, late of the Town of Encampment, in the State and District of Wyoming, and within the jurisdiction of this court, being then and there a United States Commissioner in and for the District of Wyoming, duly appointed, qualified and acting as such United States Commissioner, did by virtue and under color of his said office as United States Commissioner, and while he was so acting as such officer, receive and have in his possession and under his control certain moneys to a large amount, towit, the amount of Twenty-two dollars (\$22.00), which said moneys he, the said Leslie C. Stallings, had received as such United States Commissioner from one Ray G. Martin, to be paid over to the Receiver of the United States Land Office at Cheyenne, in the State and District of Wyoming, and he, the said Leslie C. Stallings, then and there the said moneys aforesaid did unlawfully convert to his own use and fraudulently embezzle, against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

31 vided.

CHARLES L. RIGDON,
United States Attorney for the District of Wyoming.

Fourth Count.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and say:

That heretofore, towit, on the fifth day of February, in the year of Our Lord one thousand nine hundred and seventeen, one Leslie C. Stallings, late of the Town of Encampment, in the State and District of Wyoming, and within the jurisdiction of this court, being then and there a United States Commissioner in and for the District

of Wyoming, duly appointed, qualified and acting as such United States Commissioner, did by virtue and under color of his said office as United States Commissioner, and while he was so acting as such officer, receive and have in his possession and under his control certain moneys to a large amount, towit, the amount of Thirty-one dollars (\$31.00), which said moneys he, the said Leslie C. Stallings, had received as such United States Commissioner from one Hattie A. Tilton, to be paid over to the Receiver of the United States Land Office at Cheyenne, in the State and District of Wyoming, and he, the said Leslie C. Stallings, then and there the said moneys aforesaid did unlawfully convert to his own use and fraudulently embezzle, against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

CHARLES L. RIGDON,

United States Attorney for the District of Wyoming.

Fifth Count.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and say:

That heretofore, towit, on the twentieth day of April, in the year of Our Lord one thousand nine hundred and seventeen, one Leslie C. Stallings, late of the Town of Encampment, in the State and District of Wyoming, and within the jurisdiction of this court, being then and there a United States Commissioner in and for the District of Wyoming, duly appointed, qualified and acting as such United States Commissioner, did by virtue and under color of his said office as United States Commissioner, and while he was so acting as such officer, receive and have in his possession and under his control certain moneys to a large amount, towit, the amount of Twenty-two dollars (\$22.00), which said moneys he, the said Leslie C. Stallings, had received as such United States Commissioner from one Percy H. Goldsmith to be paid over to the Receiver of the United States Land Office at Cheyenne, in the State and District of Wyoming, and he, the said Leslie C. Stallings, then and there the said moneys aforesaid did unlawfully convert to his own use and fraudulently embezzle, against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

CHARLES L. RIGDON,

United States Attorney for the District of Wyoming.

Sixth Count.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and say:

33 That heretofore, towit, on the first day of May, in the year of Our Lord one thousand nine hundred and seventeen, one Leslie C. Stallings, late of the Town of Encampment, in the

State and District of Wyoming, and within the jurisdiction of this court, being then and there a United States Commissioner in and for the District of Wyoming, duly appointed, qualified and acting as such United States Commissioner, did by virtue and under color of his said office as United States Commissioner, and while he was so acting as such officer, receive and have in his possession and under his control certain moneys to a large amount, towit, the amount of Twenty dollars and fifty cents (\$20.50), which said moneys he, the said Leslie C. Stallings, had received as such United States Commissioner from one Albert Anderson to be paid over to the Receiver of the United States Land Office at Cheyenne, in the State and District of Wyoming, and he, the said Leslie C. Stallings, then and there the said moneys aforesaid did unlawfully convert to his own use and fraudulently embezzle, against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

CHARLES L. RIGDON,
United States Attorney for the District of Wyoming.

Seventh Count.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and say:

That heretofore, towit, on the twenty-fourth day of April, in the year of Our Lord one thousand nine hundred and seventeen, one Leslie C. Stallings, late of the Town of Encampment, in the State and District of Wyoming, and within the jurisdiction of this court, being then and there a United States Commissioner in and
34 for the District of Wyoming, duly appointed, qualified and acting as such United States Commissioner, did by virtue and under color of his said office as United States Commissioner, and while he was so acting as such officer, receive and have in his possession and under his control certain moneys to a large amount, towit, the amount of Eight dollars (\$8.00), which said moneys he, the said Leslie C. Stallings, had received as such United States Commissioner from one Samuel S. Sage to be paid over to the Receiver of the United States Land Office at Cheyenne, in the State and District of Wyoming, and he, the said Leslie C. Stallings, then and there the said moneys aforesaid did unlawfully convert to his own use and fraudulently embezzle, against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

CHARLES L. RIGDON,
United States Attorney for the District of Wyoming.

Eighth Count.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and say:

That heretofore, towit, on the ninth day of May, in the year of Our Lord one thousand nine hundred and seventeen, one Leslie C. Stallings, late of the Town of Encampment, in the State and District of Wyoming, and within the jurisdiction of this court, being then and there a United States Commissioner in and for the District of Wyoming, duly appointed, qualified and acting as such United States Commissioner, did by virtue and under color of his said office as United States Commissioner, and while he was so acting as such officer, receive and have in his possession and under his control certain moneys to a large amount, towit, the amount of 35 Eight dollars (\$8.00), which said moneys he, the said Leslie C. Stallings, had received as such United States Commissioner from one Joseph R. Peryam to be paid over to the Receiver of the United States Land Office at Cheyenne, in the State and District of Wyoming, and he, the said Leslie C. Stallings, then and there the said moneys aforesaid did unlawfully convert to his own use and fraudulently embezzle, against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

CHARLES L. RIGDON,

United States Attorney for the District of Wyoming.

Endorsements: No. 906. Crim. In the District Court of the United States for the District of Wyoming. United States of America vs. Leslie C. Stallings. Indictment for violation of Sec. 97 F. P. C. 1910. Embezzlement of moneys in connection with land office matters. (8 counts.) A True Bill: A. H. Marble, Foreman of Grand Jury. Filed May 15, 1918. Charles J. Ohnhaus, Clerk. Charles L. Rigdon, United States Attorney for the District of Wyoming. David J. Howell, Assistant United States Attorney for the District of Wyoming.

UNITED STATES OF AMERICA,

District of Wyoming, ss:

I, Charles J. Ohnhaus, Clerk of the United States District Court for the District of Wyoming, do hereby certify the above and foregoing to be a true, correct and complete transcript and copy 36 of the Indictment in case No. 906, United States of America vs. Leslie C. Stallings, filed in this court May 15, 1918.

Witness my hand and the seal of said court, at Cheyenne, in said District Court, this 11th day of June, A. D. 1918.

[SEAL.]

CHARLES J. OHNHAUS,

Clerk,

By FLORENCE BRADLEY,

Deputy.

Department of Justice.

United States Marshal's Office.

District of Wyoming.

CHEYENNE, WYO., June 11, 1918.

Mr. Morris Splain, U. S. Marshal, Washington, D. C.

DEAR SIR: Enclosed please find certified copy of indictment in re Leslie C. Stallings. Please make immediate arrangements to have him removed to this District or give bond to appear at the next term of the District Court, on Monday, November 11, 1918.

Respectfully,

DANIEL F. HUDSON,
United States Marshal.

H./K.
1 Encl.

37 THE UNITED STATES OF AMERICA,
District of Wyoming:

The President of the United States of America, To the United States Marshal of the District of Wyoming, Greeting:

You are hereby commanded that you take the body of Leslie C. Stallings if he shall be found in your District, and safely him keep, so that you have his body before the District Court of the United States, for the District of Wyoming, at the building used as an United States Court House, in the City of Cheyenne, in said District, Forthwith, to answer unto the United States of America, in a certain bill of Indictment preferred against him in said Court for violation of Sec. 97 F. P. C. 1910. Embezzlement of moneys in connection with land office matters. (8 Counts.)

And have you then and there this writ, with due return thereon endorsed.

Witness, the Honorable John A. Riner, Judge of the said District Court, and the seal thereof, at the City of Cheyenne, in
[SEAL.] said District, this 15th day of May, A. D. 1918, and of the Independence of the United States the 142nd year.

CHARLES J. OHNHAUS,
Clerk.

By FLORENCE BRADLEY,
Deputy Clerk.

(Endorsed.)

No. 906.

District Court of the United States, District of Wyoming.

38

THE UNITED STATES OF AMERICA

vs.

LESLIE C. STALLINGS.

Bench Warrant.

The defendant may be let to bail before an United States Commissioner, in the sum of \$2000.00.

CHARLES J. OHNHAUS,
Clerk.

* * * * *

C. L. RIGDON,
United States District Attorney.

Received & filed July 8/18. Isaac R. Hitt, U. S. Commissioner.
Motion denied after argument of Counsel. Isaac R. Hitt, U. S. Commissioner. July 8/18.

In the United States Commissioner's Court in and for the District
of Columbia, U. S. A.

In the Matter of LESLIE C. STALLINGS.

No. —.

Extradition Hearing.

Now comes Leslie C. Stallings, the defendant in the above entitled and numbered cause, as shown by the United States Commissioner's docket in and for the District of Columbia, and alleges, affirms, and prays the Honorable Commissioner of said Court as follows:

39 1st. That he was arrested in the District of Columbia on June 10th, A. D., 1918, under and by virtue of a bench warrant issued out of the United States District Court for the Judicial District of Wyoming, and transmitted to the United States Marshal for the District of Columbia, that said warrant charged the affiant with embezzlement under Section 97 of the United States Criminal Code, and that under the command of said bench warrant he was held in custody by the said United States Marshal.

2nd. That on June 11th, A. D., 1918, your affiant filed in due form an application for writ of Habeas Corpus as shown by Habeas

Corpus docket in and for the Supreme Court of the District of Columbia, the said application being numbered 734, as shown by said docket; your said affiant alleged in said petition that he was illegally restrained of his liberty by reason of said arrest and incarceration; that the Honorable Chief Justice of the Supreme Court of the District of Columbia granted said application and directed that your affiant be released on bail in the sum of \$2000 to await a hearing on the merits July 2nd, A. D., 1918; that a good and sufficient bail bond was given, and your affiant was released from custody under bail to await a final hearing and determination of his allegation of illegal arrest and restraint.

3rd. On the 2nd day of July, A. D., 1918, when the said cause came on for hearing in the Supreme Court of the District of Columbia, an order of continuance was granted by the Honorable Justice Hitz, and July 16th, A. D., 1918, fixed as the date for further hearing; and therefore because of the facts before stated said cause pending in the Supreme Court of the District of Columbia has not been finally disposed of by said Court.

40 4th. That on the 27 day of June, A. D., 1918, a warrant of arrest for your said affiant was issued from the Honorable United States Commissioner's Court in and for the District of Columbia charging your said affiant with embezzlement under a bench warrant, and certified copy of indictment issued by and from the United States District Court in and for the District of Wyoming; the said warrant of arrest issued from the United States Commissioner's Court in and for the District of Columbia was based wholly and exclusively and grew out of the exact state of facts on which your affiant was arrested on June 10th, A. D., 1918, under the charge of embezzlement, and the sufficiency of which charge was denied by your affiant in his application for writ of Habeas Corpus as heretofore set forth, and the hearing on the allegation of said insufficiency is fixed in the Honorable Supreme Court for the District of Columbia for the 16th day of July, A. D., 1918, at 10 o'clock in the forenoon.

5th. That on a hearing under the warrant of arrest issued by the Honorable Commissioner's Court charging embezzlement under the warrant issued by the said Court and which hearing was held on July 5th, A. D., 1918, in the District of Columbia, it was ordered and decreed that your said affiant should return to the Judicial District of Wyoming to answer the said charge of embezzlement, and in order to avoid imprisonment and immediate return to said District for trial he gave bail in the sum of \$2000 to insure his appearance and answer said charges of embezzlement.

6th. In view of the foregoing state of facts your affiant respectfully asks that an order of the Honorable Commissioner's Court be entered setting aside and making of no avail his arrest and order of commitment and the fixing of bail and bond given herein, and that
41 the said hearing of the probable cause for removal to the Judicial District of Wyoming be fixed to await the final hearing of affiant's application now pending before the Supreme Court of the District of Columbia, and your said affiant here alleges

that said Court under the said writ of Habeas Corpus has full, complete, and exclusive jurisdiction of all charges in this said matter until finally disposed of by appropriate orders of the said Court; and your said affiant further alleges that he believes all orders of the Honorable Commissioner's Court relating to his custody and control under the facts as before set forth are null, void, and of no force whatsoever.

7th. Your affiant therefore asks that all orders directing his arrest and appearance before the United States District Court in and for the District of Wyoming be held null, void, and of no effect, and that all papers relating thereto be held in the custody of the United States Commissioner in and for the District of Columbia to await the final decree on the application for Habeas Corpus as hereinbefore set forth.

LESLIE C. STALLINGS.

Subscribed and sworn to before me this the 8th day of July, A. D., 1918.

[SEAL.]

M. GRACE DELANY,
Notary Public D. of C.

(Endorsed.)

In the U. S. Commissioner's Court.

Extradition Matter of LESLIE C. STALLINGS.

42 Affidavit and application for vacating of proceedings and orders.

Received & filed July 8/18.

ISAAC R. HITT,
U. S. Commissioner.

Motion denied.

ISAAC R. HITT,
U. S. Commissioner.

(Here follow diagrams marked pages 43, 43a and 43b.)

44

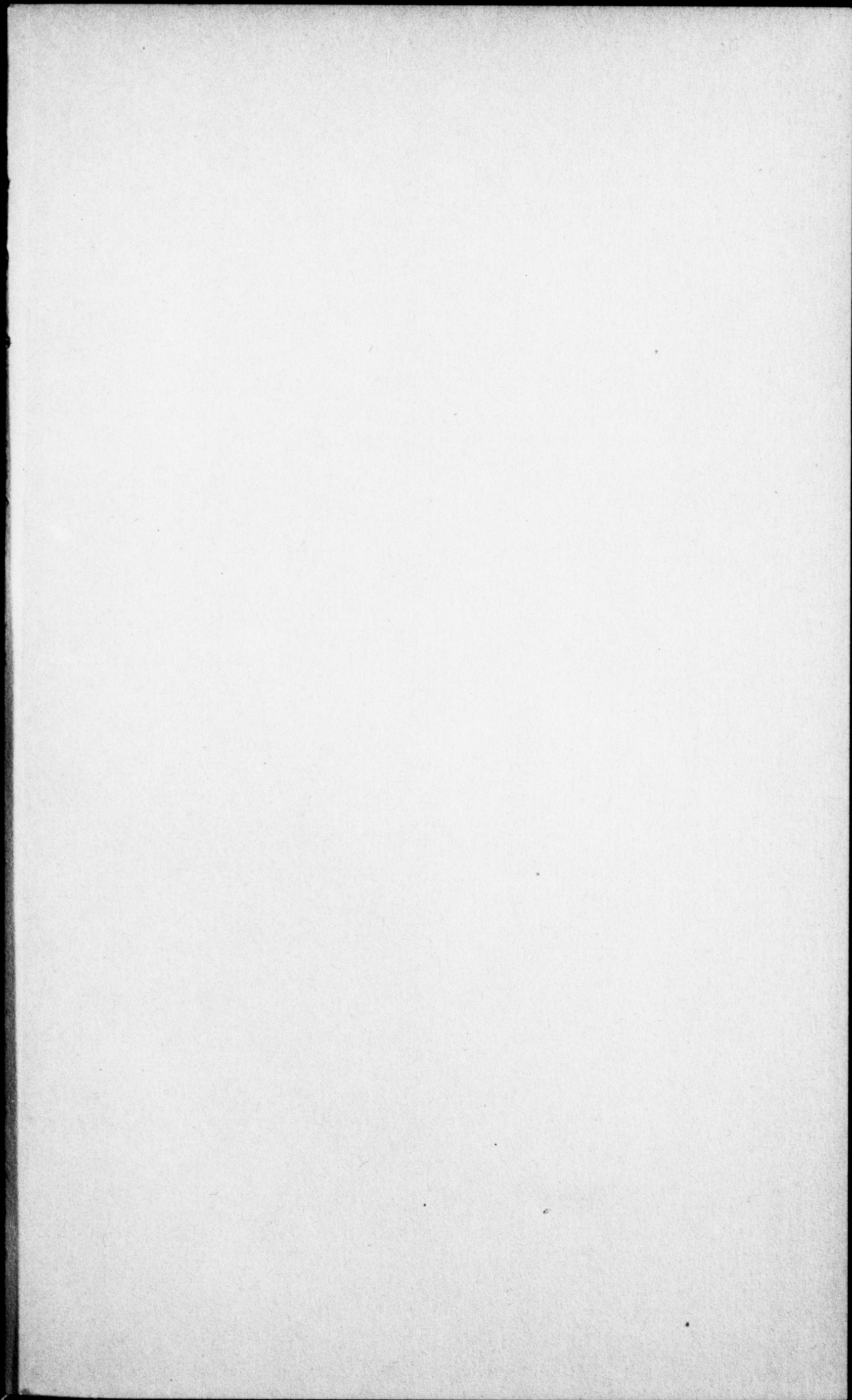
Demurrer.

Filed in Open Court July 25, 1918.

* * * * *

Now comes Leslie C. Stallings, the applicant in the above styled and numbered cause, and respectfully shows the Honorable Court:

1st. That the statements and matters set forth in the return of the United States Marshal in and for the District of Columbia in re-



Division

THE UNITED STATES OF AMERICA

Lester C^{us.} Stallings

FEEs OF U. S. COMMISSIONER.
(See Act of May 28, 1896.)

6/27. Drawing complaint, with oath and jurat to same, 50c..... 30

....Copy of complaint, with certificate to same, 30c..... 30

....Issuing warrant of arrest, 75c; Entering marshal's return, warrant of arrest, 16c..... 75
15

7/6. Issuing subpoena or subpoenas in said case, 25c.; with 5c for each of... witnesses in addition to the first, ...c.; Ent. return of subp., 15c..

....Drawing temporary bond of defendant and sureties, taking acknowledgment of same and justification of sureties, 15c.....

....Issuing tempy commitment and making copy of same, \$1.00; Ent. ret. of temp. commit., 15c.....

7/5. Administering oaths to ... U. S. witnesses on trial, 10c. each, and witnesses for defendant, 10

7/5. Hearing and deciding on criminal charges on the ... day of ... 19... and reducing the testimony to writing when required by law or order of court, per diem, \$5.00..... 5 00

....Same, for one additional day on the ... day of because the hearing could not be completed in one day, per diem, \$5.00

9. Drawing final bond of defendant and sureties, taking acknowledgment of same, and justification of sureties, 75c..... 75

....Issuing final commitment and making copy of same, \$1.00; Ent. return of final commit., 15c.....

....Recognition of all witnesses in the case, defendant being held for court, 60c.....

....Oath to U. S. witnesses as to attendance and travel, 5c. each

....Order, in duplicate, to pay first witness on behalf U. S., 30c. and 5c. for each of additional U. S. witnesses, ... c.....

7/6. Transcr. of proceed., required by order of court, and transm. of original papers to court, 60c..... 60

....Copy of warrant of arrest, with certificate to same, when defendant is held for court and original papers are not sent to court, 40c.

....Examination and certificate under Section 1042, It. S., and all services connected therewith (date of commitment to serve sentence, ... 19...; period of imprisonment named in sentence amount of fine and costs, \$.....), \$3.00.....

Fees of Witnesses, Guards, etc. (name of each).....

No. 225
 statements } page 43
 1.
 approved

Before me, Isaac R. Hitt,
a United States Commissioner for said District, complaint and affidavit
was made-warrant and certified copy of complaint was presented-on
this 27 day of June, 1918, by
Frank M. Helsh U. S. Deputy Marshal
charging in substance that on or about the certain sundry dates
of given below, at State & Dist. of Maryland
Leslie C Stallings in said District, the defendant,
in violation of Section 97, Chapter _____, Act _____,

of the Revised Statutes of the United States Penal Code, did unlawfully
Receive & have in his possession & under his control
certain moneys last given above, which said moneys
he had received, as such U. S. Commissioner to be paid
over to the Receiver of the U. S. Land Office at Cheyenne
Wyo., and did unlawfully convert to his own use & private
benefit contrary to law.

Complaint approved by the U. S. District Attorney on ^{Index} June 27, 1918
On June 27, 1918, issued warrant to Maurice Splain
U. S. Marshal, for the District of Columbia
On July 6, 1918, warrant returned, indorsed as follows:

"Received this warrant on the 5 day of July, 1918, at Washington, D.C. and executed the same by arresting the within named Archie C Stallings at Washington D.C. on the 5 day of July, 1918, and have his body now in court, as within I am commanded.
Maurice S. Olson U. S. Marshal, District of Columbia
by F. L. Hudson Deputy."

On _____, 19____, issued subpoenas for the following witnesses in
 behalf of U.S.: Apr 7/17 Recd \$2.80 from Ira D. Holford, Feb 19/17
 Recd \$2.00 from Capt. A. Jones, Feb 3/17 Recd \$2.00 from Ray
 J. Martin, Feb 3/17 Recd \$3.00 from Hattie A. Wilson, Apr 26/17
 Recd \$2.00 from A. Holford, May 1/17 Recd \$2.00 from Albert
 A. Wilson, Apr 26/17 Recd \$2.00 from Samuel S. Sage, May 8/17 Re-
 ceived \$ from Joe A. Brown. The said subpoena was returned, indorsed as follows:

Received this writ _____ 19____, and on or before
_____, 19____, served the same on the within named

by leaving a certified copy thereof with each of them personally; and on the within named _____

by leaving such copy at the usual place of residence of each of them. The other person—within named not found.

U. S. Marshal District of

Deputy.

On _____, 19____, issued subpoena for the following witnesses in
behalf of U. S. (or) defendant: _____

On _____, 19____, said subpoena was returned, indorsed as follows:

"Received this writ _____ 19____, and on or before _____
19____ served the same on the within named _____

by leaving a certified copy thereof with each of them personally; and on the within named _____

by leaving such copy at the usual place of residence of each of them. The other person—within named not found.

_____ U. S. Marshal _____ District of _____
_____ by _____ Deputy.

On July 5, 1918, defendant was brought before me, the said United States Commissioner, at my office, in the Maryland Bldg in said District, by A. H. Jorgel Deputy U. S. Marshal; and the complaint was then and there fully read and explained to the said defendant, who thereupon, for plea, said he is "not guilty" as charged in said complaint.

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Glenn Kellets
H. B. Gaynes

appeared for the U. S.
appeared for defendant.

And thereupon, in preliminary trial to determine whether there exists probable ground to believe said defendant guilty as charged, the following witnesses were sworn and examined on the part of the plaintiff

Frank M. Helan Spcl Depy U. S. Marshal, produced as evidence certified copy of Indictment, original Bench Warrant & letter by Daniel L. Hudson & letter of Grammettal. Defendant admitted his identity & that he was U. S. Commissioner for Dist. of N.Y. at times charged in the indictment

On _____, 19____, temporary mittimus returned indorsed as follows: "Received this MITTIMUS, with the within named prisoner, on the _____ day of _____, 19____, and on the same day I committed the said prisoner to the custody of the jail keeper named in said mittimus, with whom I left at the same time a certified copy of this mittimus. Dated _____, 19____ U. S. Marshal.

District of _____ By _____ Deputy."
On _____, 19____, at _____ o'clock _____ M., pursuant to the continuance of _____, 19____, defendant _____ w _____ brought before me, the said Commissioner, at my office _____ in said District, by _____ Deputy U. S. Marshal: the defendant _____ appeared before me; the United States was represented by _____ U. S. Attorney, and the defendant _____ being present, w _____ also represented by _____ attorney.
The following witnesses were sworn and examined on the part of the United States _____

On _____, 19____, a certified copy of indictment _____
On _____, 19____, From the evidence of the said witnesses, it appearing to me that the laws of the United States have _____ been violated, as charged in the complaint, and that there is _____ probable cause shown to believe the defendant _____ guilty of the alleged offense, it was ordered that he _____ give bond in the sum of \$ 2000. —
_____ dollars for his appearance before the United States District Court, in and for the _____ District of _____ Division to be held on _____, 19____, at _____, and from time to time thereafter to which the case may be continued, to answer said charge, and that in default of same, he stand committed. — be discharged.
And thereupon on the _____ day of _____, 19____, the said defendant _____ gave bond in the said sum of \$ 2000. — for his appearance at the said time and place, with the following sureties:

George H. Ray
On the _____ day of _____, 19____, the defendant _____ failing to give bond, w _____ committed to the jail of _____ County, there to remain until discharged by due process of law.

On _____, 19____, final mittimus returned and indorsed as follows: "Received this mittimus with the within named prisoner, on the _____ day of _____, 19____, and on the _____ day, I committed the said prisoner to the custody of the jail keeper named in said mittimus, with whom I left at the same time a certified copy of this mittimus. Dated _____, 19____ U. S. Marshal.

District of _____ By _____ Deputy."
On the _____ day of _____, 19____, the following witnesses were recognized to appear at said term of Court and from time to time thereafter as the case may be continued until finally discharged.

On _____, 19____, in default of bail, issued mittimus committing witness _____ to the jail of _____ County, _____, pending trial of defendant.

On _____, 19____, mittimus returned, indorsed as follows: "Received this mittimus, with the within named prisoner, on the _____ day of _____, 19____, and on the _____ day, I committed the said prisoner to the custody of the jail keeper named in said mittimus, with whom I left at the same time a certified copy of this mittimus. U. S. Marshal.
District of _____ By _____ Deputy."

WITNESSES IN ABOVE CASE.		WITNESSES—Continued.	
Name.	Residence.	Name.	Residence.
Frank M. Helan Spcl Depy U. S. Marshal			
		Sureties of Defendant, in above recognizance.	
		Geo. H. Ray	1302 31st St N. Y.
			3249 3251 M St N. Y.

No 3225. Stallings } . v } Spruance } page 43 a		43 a	Surety worth \$5000

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No. 734 ^{No. 184} Habeas Corpus

FORM L.

U. S. Commissioner's Transcript.

THE UNITED STATES OF AMERICA

vs.

Lester C. Stallings

Transcript of Proceedings

Before Isaac R. Hitt
United States Commissioner
for the Dist of Columbia
Division

CERTIFICATE.

THE UNITED STATES OF AMERICA

District of Columbia ss

Division

I, the undersigned, United States Commissioner for said District, do hereby certify that the within is a full and true Transcript of the proceedings had by and before me in the above named cause, and of the costs therein, as recorded in my docket. 2
page 133 and that the papers numbered one to 28 inclusive, accompanying this transcript, are the original papers in said cause; all of which are herewith transmitted into the District Court of the United States, within and for said District. Hys

Witness my hand and seal on this 8
day of July 19 18.
Isaac R. Hitt
U. S. Commissioner as aforesaid.

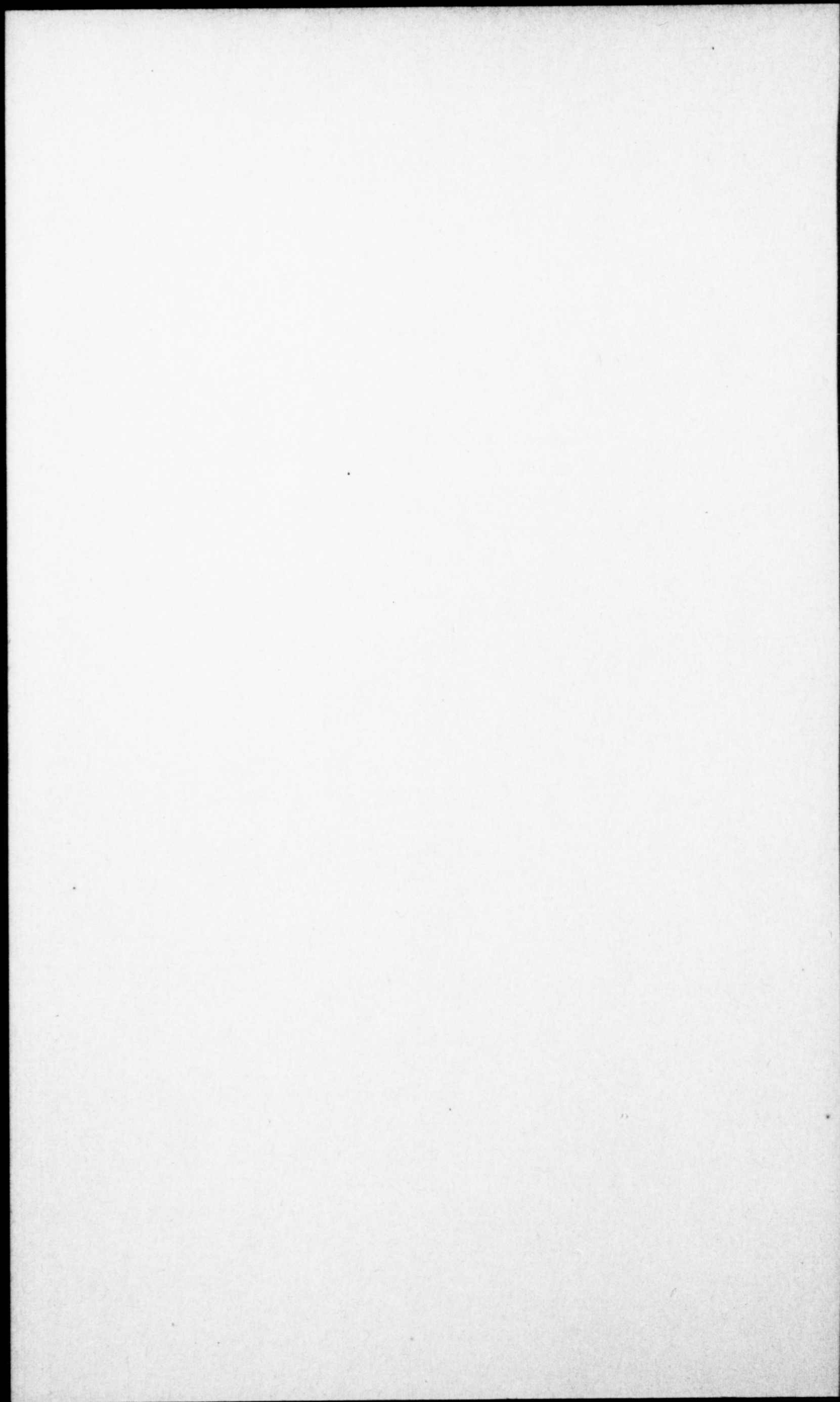
Returned into court and filed this
day of 19

Clerk.

Return to Writ of
Certiorari filed July 19/18
then mail. Isaac R. Hitt

THE W. H. ANDERSON COMPANY, U. S. Commissioner
Law Publishers, Cincinnati, O. D. C.

No. 3225
Stallings } page 436.
Spencer



sponse to the writ of Habeas Corpus in this cause were not and are not sufficient in law to warrant the action taken by the said Marshal as set forth by him;

2nd. That the respective warrants herein involved and the indictment, as shown by the certified copy thereof filed in this cause and the matters therein stated in matter and in form are not sufficient in law to warrant the restraint of this applicant in any manner.

LESLIE C. STALLINGS.

Decree.

Filed August 20, 1918.

* * * * *

This cause coming on for hearing, on the twenty-fifth day of July, 1918, upon the petition for the writ of habeas corpus, the writ issued thereon, the return thereto, and the demurrer to said return, filed herein; and the petition for the writ of certiorari, the writ issued thereon, and the return thereto, filed herein, the same having been argued by counsel for the petitioner and the respondents herein, and submitted to the court; and the court now being fully advised, it is, this 20th day of August, 1918,

45 Adjudged, Ordered and Decreed, that petitioner's demurrer to the return herein filed by the respondent be, and it hereby is, overruled, with leave to plead to or traverse said return as petitioner may be advised.

And the petitioner, by his counsel, having duly excepted to said action of the Court, and having elected to stand on said demurrer, declaring he would neither plead to nor traverse said return, it is further

Adjudged, Ordered and Decreed, that said petition for writ of habeas corpus be, and it hereby is, dismissed; that the writ thereon issued be, and it hereby is, discharged; and that respondent have judgment for his costs and execution therefor.

And petitioner, by his counsel, having duly excepted to said action of the court, and having waived objection to the form of return to the writ of certiorari herein filed, though reserving to himself the benefit of all insufficiencies of substance therein appearing, it is further

Adjudged, Ordered and Decreed, that the petition for said writ of certiorari and the writ issued thereon be, and they hereby are, dismissed; and that the proceedings shown by the return to said writ, herein filed, be, and they are hereby, remanded to the respondent, Isaac R. Hitt, United States Commissioner, for further action according to law.

And petitioner, by his counsel, having duly excepted to said action of the court, and having in open court given notice of his intention to prosecute an appeal to the Court of Appeals, upon motion by counsel for petitioner, it is further

Ordered, that cost bond on appeal be of one hundred dollars, or
 46 in lieu thereof, a deposit with the clerk of this court of fifty
 dollars.

By the Court:

F. L. SIDDONS,
Justice.

Memorandum.

September 10, 1918.

Bond on appeal \$100 with Geo. W. Ray as surety, approved and
 filed.

Designation of Record.

Filed October 11, 1918.

* * * * *

In the preparation of the record for the Court of Appeals, District
 of Columbia, in the above entitled cause let the same be comprised
 of the following filings:

Petition for Writ of Habeas Corpus;
 Order directing issuance of writ;
 Writ of Habeas Corpus issued to U. S. Marshal;
 Return of U. S. Marshal;
 Petition for Writ of Certiorari;
 Affidavit of Petitioner filed with Petition;
 Order for Writ;
 Return of Isaac R. Hitt, United States Commissioner, and com-
 plete copy of proceedings before said Commissioner;
 Defendant's demurrer;
 Decree of Mr. Justice Siddons dismissing petition.
 Assignment of errors.
 Designation of record.

Respectfully submitted by

W. B. JAYNES,
Attorney for Appellant.

47

Assignments of Error.

Filed October 19, 1918.

* * * * *

1st. The Court erred in overruling Defendant's demurrer.
 2nd. The Court erred in overruling Defendant's plea that the
 United States Commissioner was wholly without jurisdiction in this
 said cause during the pendency in the Supreme Court of the Dis-
 trict of Columbia of an application for discharge on Habeas Corpus,
 and which in no manner had been heard on its merits.

3rd. The Court erred in overruling Defendant's plea that the allegations of the respective counts in the indictment fail to charge a crime against any law, or laws of the United States, and especially against the provisions of Section #97 of the Criminal Code of the United States.

4th. The Court erred in overruling Defendant's plea that a United States Commissioner is not an officer of the United States within the meaning of Section #97 of the Criminal Code of the United States.

5th. The Court erred in overruling Defendant's plea that the ownership of the respective sums of money alleged to have been embezzled is not set forth with sufficient legal precision as to advise him fully in respect thereto.

6th. The Court erred in directing Isaac R. Hitt, United States Commissioner, to return his transcript of proceedings in this cause, together with the original bail bond, into the United States Court for the District of Wyoming, prior to the final disposition of this said cause on appeal.

W. B. JAYNES,
Att'y.

48

Memorandum.

October 25, 1918.

Time to file transcript of record extended to and including November 15, 1918.

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Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 48, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, In the Matter of Lester C. Stallings, Application for Writ of Habeas Corpus, Habeas Corpus No. 734, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 13th day of November, 1918.

JOHN R. YOUNG,
Clerk.

[Seal of Supreme Court of the District of Columbia.]

Endorsed on cover: District of Columbia Supreme Court. No. 3225. Leslie C. Stallings, appellant, vs. Maurice Splain, U. S. Marshal. Court of Appeals, District of Columbia. Filed Nov. 15, 1918. Henry W. Hodges, Clerk.

COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

FEB 28 1919

IN THE

Henry C. Hodges
Chlor
Court of Appeals, District of Columbia.

JANUARY TERM, 1919.

No. 3225.

LESLIE C. STALLINGS, APPELLANT,

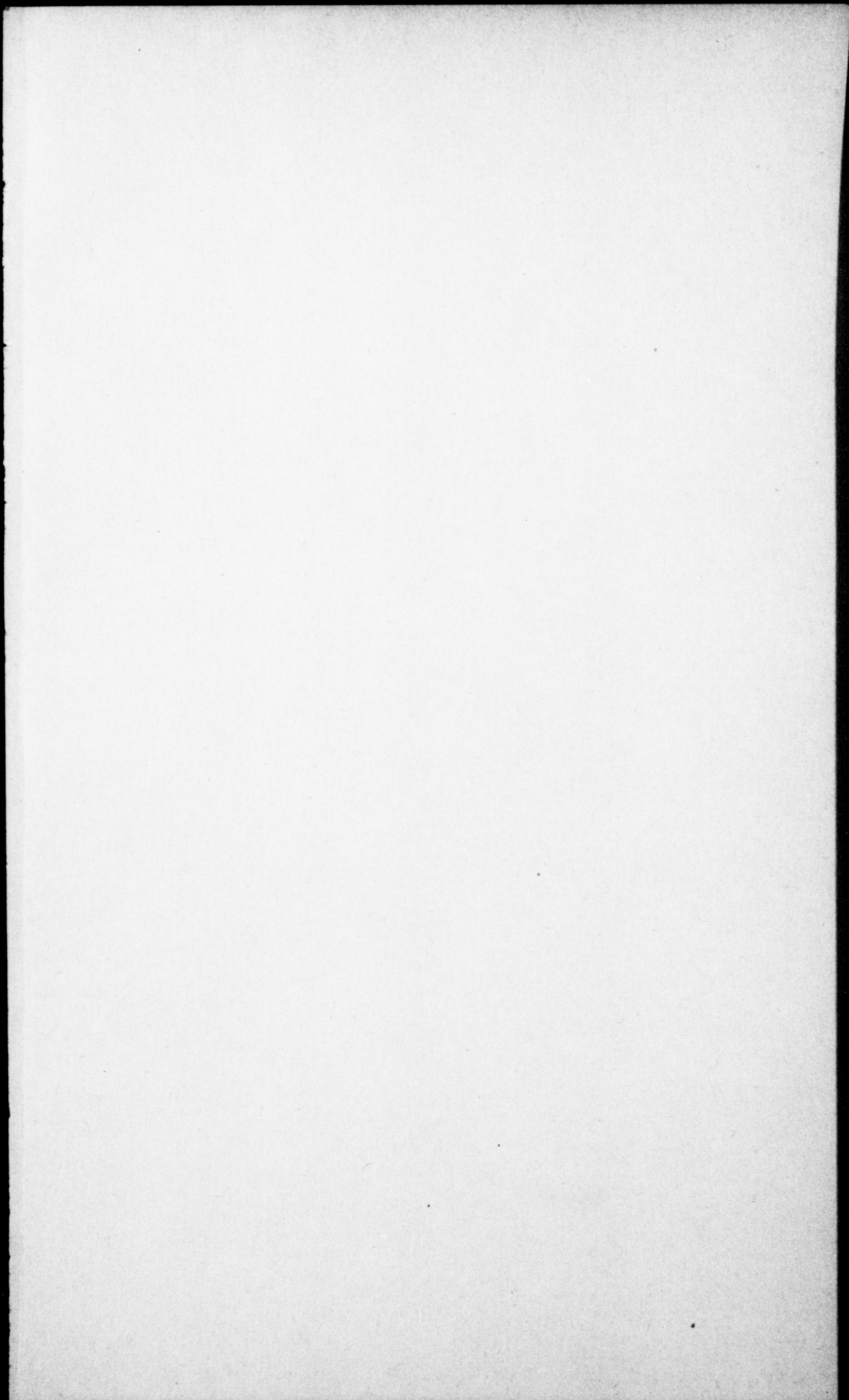
vs.

MAURICE SPLAIN, UNITED STATES MARSHAL IN
AND FOR THE DISTRICT OF COLUMBIA, APPELLEE.

BRIEF FOR APPELLANT.

W. B. JAYNES,
For Appellant.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C.



Court of Appeals, District of Columbia.

JANUARY TERM, 1919.

No. 3225.

LESLIE C. STALLINGS, APPELLANT,

vs.

MAURICE SPLAIN, UNITED STATES MARSHAL IN
AND FOR THE DISTRICT OF COLUMBIA, APPELLEE.

BRIEF FOR APPELLANT.

Statement of the Case.

Leslie C. Stallings, appellant, and hereinafter in this brief called petitioner, was arrested on the 10th day of June, 1918, in the District of Columbia, by the appellee, Maurice Splain, United States Marshal in and for the District of Columbia, upon a warrant issuing out of the District Court of the United States for the District of Wyoming on the 15th day of May, 1918, charging the said Leslie C. Stallings with having committed "embezzlement of moneys in connection with land office matters (8 counts)," in "violation of sec. 97, F. P. C. 1910". On the 11th day of June the

petitioner filed in the Supreme Court of the District of Columbia his petition for the writ of *habeas corpus*, alleging in substance his arrest on the day and year aforesaid, at the District aforesaid, upon the warrant aforesaid, and that he had not been accorded due process of law as to notice of the alleged charges against him. Upon the said petition a writ of *habeas corpus* issued, June 11, 1918, to the appellee herein, commanding him to have the body of the said petitioner in Criminal Court No. 2, Emery Building, City of Washington, immediately after the receipt of the said writ upon him. No return was filed by the appellee to this writ until the 16th day of July, 1918, and at that time appellee set up substantially the facts of the arrest and obedience of appellee to the mandate of the writ in producing the body of the petitioner as in said writ commanded, a continuance of hearing upon said writ to a future time, and petitioner's release under bail bond in the sum of \$2,000.00, conditioned for his future appearance for hearing as aforesaid. The return then averred substantially the facts which constitute the basis of this appeal.

Prior to hearing had upon this writ of *habeas corpus*, however, and while petitioner was under bail and on liberty upon his bond, on the 27th day of June, 1918, a sworn complaint was made before Isaac R. Hitt, a United States Commissioner in and for the District of Columbia, upon which the said Isaac R. Hitt issued his warrant of arrest of even date with said complaint, and on the 5th day of July, while the petitioner was still at liberty on the bail bond pending the hearing on the writ of *habeas corpus* as aforesaid, he was a second time arrested, this time upon the warrant issued by the said United States Commissioner, but setting forth the same charge and the alleged commission of the same offense as set out in the original warrant upon which petitioner was arrested June 10, 1918. On July 5th a hearing was had before the United States Commissioner to determine whether there existed probable ground to believe petitioner guilty as charged. There were produced in evidence a cer-

tified copy of the indictment, the original bench warrant and certain letters, which, together with your petitioner's admission of his identity, and of the fact that he was a United States Commissioner for the District of Wyoming at the times charged in the indictment, constituted the sole evidence upon which the Commissioner could have found probable cause to believe petitioner guilty of the charge alleged.

On the same day, it appearing to the Commissioner that the laws of the United States had been violated as charged in the complaint, and that probable cause had been shown to believe petitioner guilty of the alleged offense, it was ordered that petitioner give bond in the sum of \$2,000.00 for his appearance before the United States District Court in and for the District of Wyoming, which was accordingly done. On the 8th day of July petitioner filed before the Commissioner his motion to vacate and set aside his order compelling petitioner to give said bond, setting up his arrest and release on *habeas corpus*, continuance of the hearing thereon to July 16, 1918; likewise the issuance of the Commissioner's warrant upon the sworn complaint while these proceedings were still pending and unheard, and praying that, in view of the foregoing facts, he, the said Commissioner, should enter an order setting aside the order of commitment and fixing bail passed as hereinbefore set out.

This motion was denied, and then petitioner, on the 18th day of July, 1918, filed in the Supreme Court of the District of Columbia his petition praying for the issuance of a writ of certiorari to Isaac R. Hitt, United States Commissioner in and for the District of Columbia, to certify to the said Supreme Court the proceedings in the case of your petitioner, and all things touching the same. The writ issued in accordance with this petition on the 18th day of July, 1918, and respondent certified the proceedings in the cause and all things touching the same, as fully set out in the record, pages 10 to 26, inclusive. On July 25th hearing was had not only upon the petition for the writ of *habeas corpus*, the

writ issued thereon, the return thereto, and the demurrer to said return filed by petitioner, but also upon the petition for the writ of certiorari, the writ and return thereto; and, on August 20, 1918, there was passed an order overruling petitioner's demurrer to the return to the writ of *habeas corpus*, dismissing the petition for the said writ of *habeas corpus*, and discharging the writ issued thereon. To this action of the Court in overruling petitioner's demurrer and dismissing the petition for the writ and discharging the writ itself, petitioner, by his counsel, duly excepted (Record, p. 28). In the same order the Court dismissed the petition for the writ of certiorari and the writ issued thereon and remanded to the respondent, Isaac R. Hitt, aforesaid, the proceedings certified in his return to the writ aforesaid. To this action of the Court, petitioner, by his counsel, duly excepted (Record, p. 27); and the cause is now before this Court upon the six errors assigned upon the Court's action in overruling the demurrer aforesaid, and certain rulings made in matters more specifically set forth in the assignments of error herein.

Assignments of Error.

1. The Court erred in overruling defendant's demurrer.
2. The Court erred in overruling defendant's plea that the United States Commissioner was wholly without jurisdiction in this said cause during the pendency in the Supreme Court of the District of Columbia of an application for discharge on *habeas corpus*, and which in no manner had been heard on its merits.
3. The Court erred in overruling defendant's plea that the allegations of the respective counts in the indictment failed to charge a crime against any law, or laws of the United States, and especially against the provisions of section 97 of the Criminal Code of the United States.
4. The Court erred in overruling the defendant's plea

that a United States Commissioner is not an officer of the United States within the meaning of section 97 of the Criminal Code of the United States.

5. The Court erred in overruling defendant's plea that the ownership of the respective sums of money alleged to have been embezzled is not set forth with sufficient legal procedure as to advise him fully in respect thereto.

6. The Court erred in directing Isaac R. Hitt, United States Commissioner, to return his transcript of proceedings in this cause, together with the original bail bond, into the United States Court for the District of Wyoming, prior to the final disposition of this said cause on appeal.

ARGUMENT.

Assignment of Error No. 2.

In the consideration of these various assignments of error, for the purpose of expediency and the more orderly discussion of them and the questions therein contained, the second assignment will be first considered, namely, that the Court erred in overruling the contention of petitioner to the effect that the United States Commissioner was wholly without jurisdiction to act in the cause during the pendency of an application for discharge on *habeas corpus* in the Supreme Court of the District of Columbia, and which in no manner had been heard on its merits.

Reference to the record will show that the petition for *habeas corpus* was filed in this cause on the 11th day of June, 1918, and from that date, by proper order of Court, hearing upon the merits was continued to and until the 25th day of July, 1918, during which time petitioner was admitted to bail. During the pendency of this hearing, proceedings before the United States Commissioner were instituted by swearing to the written complaint of June 27, 1918, and issuance of warrant upon said complaint by the Com-

missioner; and on the fifth day of July, petitioner was again arrested on a warrant, which, as is set forth in this record, charged the petitioner with having committed substantially and in fact the same offenses, provable by the same facts, against the same sovereignty, and in the same jurisdiction, as formed the basis of the charge set out in the original warrant, which then awaited the determination of the Supreme Court of the District of Columbia in a hearing not yet had. It is submitted that the Commissioner's conduct in thus issuing a warrant while there was still pending a hearing before the Supreme Court of the District of Columbia upon a writ of *habeas corpus* issued on a petition raising the legality of petitioner's arrest under practically and identically the same charge was without jurisdiction; for pending this hearing upon the writ of *habeas corpus*, the petitioner was under the control and direction of the Supreme Court of the District of Columbia. He was then detained, not under the original commitment but under the authority of the writ of *habeas corpus*, and, up and until a final hearing upon the merits of the petition had been had, he was so completely and fully within the jurisdiction and control of the Supreme Court of the District of Columbia, that the United States Commissioner could not under the law virtually deprive the Supreme Court of the District of Columbia of its jurisdiction by arresting, as he did, the petitioner, and holding him to bail in the removal proceedings. That petitioner was under the control and direction of the Supreme Court of the District of Columbia was decided as early as the case of *Barth vs. Clise*, 12 Wall., 400; 20 U. S. (L. Ed.), 393. And that the United States Commissioner was equally without jurisdiction in the proceedings which he instituted and conducted from the 27th day of June through the 8th day of July, is equally established on principle.

A similar question was raised in the case of *In re Farez*, 8 Fed. Cases, page 1006, Case No. 4644, in the Circuit Court of the Southern District of New York. In that case it was

distinctly held that the petitioner must be considered as having been under and in the custody of the court issuing the writ of *habeas corpus* at least from the time the writ was served on the marshal, and that the marshal had no right after that time, and during the pendency of the writ, to arrest Farez upon any warrant not in his hands at the time the writ was served upon him. In stating the rights of Farez the Court said:

"The writ of *habeas corpus* having been issued on the 6th of November, commanding the marshal to produce the body of Farez on the 10th of November, at 11 o'clock A. M., Farez must be considered as being, under said writ, in the custody of the Court, at least from the time the writ was served on the marshal, and the marshal had no right, after that time, during the pendency of the writ, to arrest Farez upon any new warrant, or upon any warrant not in his hands at the time the writ was served upon him. The return by the marshal, at the day and hour specified in the writ as the time for the return thereof, states that he arrested Farez on the 10th of November under a warrant dated on the 9th of November. It appears in evidence that the writ was served on the marshal prior to the time when he arrested Farez under the warrant of the 9th of November. Such arrest, on the second warrant was, therefore, illegal. Farez was entitled to have the question determined as to the lawfulness of his imprisonment and detention by virtue of the process on which he was claimed to be held at the time the writ of *habeas corpus* was served on the marshal. The proceedings under the writ had relation to at least as early a period as that. When the question of the lawfulness of the detention under the first warrant should have been disposed of, then the marshal could proceed to execute the second warrant, but not before."

It is submitted, therefore, that the warrant of the United States Commissioner was illegal, null and void, that he acquired no jurisdiction over petitioner, and that his entire proceedings were void and of no effect.

Assignments of Error 3 and 5.

The third and fifth assignments of error are based upon the Court's action in overruling petitioner's contention that the allegations of the respective counts in the indictment failed to charge a crime against any law or laws of the United States, and more particularly against the provisions of section 97 of the Criminal Code of the United States, and also the Court's action in overruling the petitioner's contention that the ownership of the respective sums of money alleged to have been embezzled was not set forth with that legal precision requisite to advise him fully in respect thereto.

Record, pages 17 to 22, inclusive, sets forth the indictment offered in the proceedings by the United States Commissioner, and which, together with the petitioner's admission as to his identity and the fact of petitioner's being a United States Commissioner at the times alleged in said indictment, constituted the sole evidence upon which the Commissioner could find probable cause that petitioner herein was guilty of the crime alleged. The indictment is in eight counts, each similar to the other, and an examination of the language of one is decisive of the questions raised with regard to them all. A reading of each and every count shows that the charge in substance against petitioner was that on a certain date in 1917, while he was a resident of the town of Encampment, in the State of Wyoming, and "then and there United States Commissioner in and for the District of Wyoming, duly appointed, qualified, and acting as such Commissioner, did, by virtue and under color of, his said office as United States Commissioner, and while he was so acting as such officer, received and had in his possession, and under his control, certain moneys * * * which said moneys, he, the said Leslie C. Stallings, had received as such United States Commissioner from one * * * to be paid over to the receiver of the United States Land Office, at Cheyenne, in the State of Wyoming, and he, the said Leslie

C. Stallings, then and there the said moneys aforesaid, did unlawfully convert to his own use, and fraudulently embezzle, against the peace and dignity of the United States, *et cetera.*" It is submitted that this charge on its face proves that petitioner could not, under the law, have been guilty of not only any crime but more particularly any crime against the United States, and especially under section 97 of the Criminal Code of the United States, for the reason that: First, the charge on its face shows that petitioner did nothing *as an officer of the United States* which would bring him within the inhibition of section 97 of the Criminal Code aforesaid, and that if he had been guilty of an embezzlement or a fraudulent conversion of moneys coming into his hands, the embezzlement and fraudulent conversion were made not contrary to any Federal Statute, but if any, against the peace and dignity of the State of Wyoming; and that petitioner, if he ever were guilty of an embezzlement or fraudulent conversion, was so not in his capacity as a United States Commissioner but in his private capacity, as an agent, employee, attorney, or what not of some private individual, who had entrusted to him moneys for a use or under a trust not contained within his duties, rights, or powers as a United States Commissioner; second, the charge on its face sets forth the commission of no offense, in that in no place in said charge is there contained any allegation of ownership sufficient to make out the offense of embezzlement therein alleged. Third,

While it has been so often held that in a removal proceeding the insufficiency of an indictment will not be inquired into, and that that is a question to be decided by the Court in which the indictment was found, and that technical objections and criticisms growing out of the artificial and often strained scrupulousness of criminal procedure are to be left to the Court in whose jurisdiction the indictment is found, provided the said indictment itself contains a narration of events and acts which tends to establish the existence of the offense said to be charged; nevertheless, it is

equally true that where upon a broad, liberal, and inartificial construction of the language of the indictment it does not appear that any offense against the laws of the United States has been committed, section 1014 of the Revised Statutes does not apply and the prisoner should not be held for removal. *In re* Benson, 131 Fed. Rep., 968, 969; *Tinsley vs. Treat*, 205 U. S., 20, *Hard vs. Splain*, 45 D. C. Appeals.

It is submitted there is nothing contained in the allegations of any of the counts of the indictment contained within this record which shows any crime to have been committed. A United States Commissioner cannot receive money from anybody to be paid over to the receiver of any United States land office, as United States Commissioner. He may while holding the office of a United States Commissioner perform acts for which he may be rendered liable under the Criminal law, but those acts may be either within his jurisdiction and right or without his jurisdiction and without his right as a United States Commissioner. And it is not difficult to determine how far he may act as commissioner in so much as the office and his jurisdiction, duties, and rights are alike determined by statute. Nowhere will it be found that he "as such United States Commissioner" can receive money from anyone "to be paid over to the receiver of the United States Land Office" at any point. It is surmised that the charge has reference to section 2294 of the U. S. Revised Statutes as amended by the act of March 4, 1904 (33 Stat., 59), but a reading of that act gives to a commissioner no other authority or right in and about land matters other than taking certain proofs, affidavits, and oaths required to be made by applicants and entrymen under the homestead and similar acts. The act gives him no authority to receive money to transmit the same to the General Land Office. It specifies the fee he may charge for taking an affidavit, *et cetera*, but in no wise makes him a receiving agent of the United States for the purpose of the transmission of whatever fees may be required at the General Land Office or

other work. The powers of the United States Commissioner may be generally enumerated as follows:

1. To issue warrants for offenders against the United States, cause them to be arrested, imprisoned, or bailed for trial.
2. To order them removed to other districts (U. S. Rev. Stats., 1014, Comp. Stats. (1913), sec. 1674.
3. To hold to security of the peace and for good behavior. U. S. Rev. Stats., sec. 727, Comp. Stats. (1913), p. 536.
4. To carry into effect the awards of foreign consuls. Comp. Stats., 1913, sec. 1248.
5. To sit as arbitrator between the captains and crews of vessels belonging to the United States, whose interests are committed to his charge, and to enforce his decisions in regard thereto. Comp. Stats. (1913), sec. 1248.
6. To take bail and forfeitures in civil cases. U. S. Rev. Stats., 945.
7. To discharge poor convicts imprisoned for non-payments of fines. U. S. Stats., sec. 1042.
8. To take certain acknowledgments. U. S. Rev. Stats., sec. 1778.
9. To institute proceedings under the laws relative to crimes against the elective franchise and civil rights of citizens, and to appoint persons to execute warrants thereunder. Comp. Stats. (1913), secs. 3935 and 3938.
10. To issue search warrants in Internal Revenue. Comp. Stats. (1913), sec. 6364.
11. Customs. Comp. Stats. (1913), sec. 5769.
12. Counterfeiting cases. Comp. Stats. (1913), sec. 10343.
13. To issue warrants for deserting foreign seamen. Comp. Stats. (1913), sec. 8380.
14. To summon masters of vessels to show cause why process should not issue. Comp. Stats. (1913), sec. 8335.
15. To issue warrants for, and examine, fugitives from justice. Comp. Stats. (1913), secs. 10110, 10114.
16. Try cases arising under the Chinese exclusion acts.

17. To take depositions *de bene esse* and depositions to file.

18. To issue a warrant in a proper case for the arrest and imprisonment of the judgment debtor on an execution issued out of a Federal Court. *Hayes vs. Canada*, 184 Fed., 821.

19. To hear and determine applications for the discharge or arrest on mesne process out of Federal courts. *Hayes vs. Canada*, 184 Fed., 821.

20. When directed so to do, to conduct the summary investigations upon petitions for remission of fines for violation of the customs-revenue laws. Comp. Stats. (1913), sec. 10133.

In none of the hereinbefore enumerated powers, duties, rights, and jurisdiction of United States commissioners can there be found any basis for the charge that a United States Commissioner can, *as such*, receive money from another to pay over that money *as such* United States Commissioner to a third person, so that in the event the said Commissioner should fraudulently convert the said money to his own use he can be charged as a United States officer with having embezzled moneys under section 97 of the Criminal Code of the United States.

A similar question to the one at bar arose in the case of *In re James*, 195 Fed., 981, under proceedings for revocation of the appointment of a United States commissioner, and the cause dismissed on the ground that services similar to the ones rendered as set out in this indictment, if they were so rendered or undertaken to be rendered, were "rendered as an employee and not as an officer," and it was therein held that the commissioner had the right under the statute to charge and be compensated for services done under precisely the same act as it is surmised form the basis for the charge set forth in this indictment.

But it is submitted that even if it could be, and it is urged that it cannot be, construed that petitioner received the money "by virtue and under color of his said office as

United States Commissioner, and embezzled and fraudulently converted the said moneys to his own use," still notwithstanding these facts, if they were facts, there is no sufficient allegation of ownership contained within any of the said counts aforesaid in this indictment to constitute any legal offense upon which probable cause could be found that the petitioner was guilty of any alleged offense. The allegation recites in substance in each and all of the counts that petitioner did, "while he was so acting as such officer, receive and have in his possession and under his control, certain moneys to a large amount * * * which said moneys, he, the said Leslie C. Stallings, had received as such United States Commissioner * * * to be paid over to the receiver of the United States Land Office * * * he, the said Leslie C. Stallings, then and there the said moneys aforesaid, did unlawfully convert to his own use and fraudulently embezzle." It is elementary that in an indictment for embezzlement the allegation of ownership of the property alleged to have been embezzled must be averred, with the same precision as in an indictment for larceny.

Bishop's New Crim. Procedure, 2nd ed., vol. 3, sec. 320.

9 R. C. L., p. 1291.

15 Cyc., 517.

Clark's Criminal Procedure, 2nd ed., 267.

It is submitted that nowhere in the indictment is the ownership of the moneys alleged to have been embezzled set forth with that degree of precision and certainty required under the law, or averred with even that sufficient particularity to negative the presumption that the money could have belonged to the petitioner himself. Averments of unlawful conversion and fraudulent embezzlement do not reach back to cure the essential defect of earlier failure to sufficiently aver ownership, and this indictment carries on its face the earmarks of its own nullity in each and every count, by its failure to contain this essential averment. It

is submitted, therefore, that upon the broadest construction which can be given to the indictment, it does not set forth facts which tend to allege any offense committed against the laws of the United States, and more particularly section 97 of the United States Criminal Code; that this could not, therefore, have formed that legal evidence requisite as a basis for the finding of probable cause, and in so much as the indictment was practically the sole evidence upon which probable cause could have been found, the Court erred upon the hearing on the writ of certiorari in refusing to quash and hold null and void, and of no effect, the entire proceedings before the commissioner. And it further erred in refusing to hold that the respective counts in said indictment failed to charge any crime, in that the ownership of the respective moneys alleged to have been embezzled was not set forth with sufficient legal precision.

Assignment of Error 1.

This assignment is based upon the Court's action in overruling the petitioner's demurrer. The demurrer, as set forth (Record, p. 36) was filed to the marshal's return to the writ of *habeas corpus* set out in Record, page 3. The demurrer proceeded upon the grounds, first, that the said return was substantially insufficient, in that no facts were set forth therein sufficient in law to warrant the action taken by the United States marshal as set forth by him in said return, and, second, that neither the warrants nor the indictment as shown by the certified copy thereof, filed in the cause, were sufficient in law to warrant the restraining of the applicant in any manner. The return of the appellee herein to the writ of *habeas corpus* aforesaid (Record, p. 3) simply sets forth the fact of the arrest of petitioner on June 10, 1918, appellee's production of the body of the petitioner in obedience to the writ on the 11th day of June, 1918, the continuance granted by the Court for hearing on said writ; the subsequent com-

plaint before the United States Commissioner, June 27, 1918, the issuance of his warrant and the arrest of said petitioner July 5, 1918, and petitioner's voluntary appearance and admission of his identity and former official character as described in the said complaint: the evidence produced before the commissioner and petitioner's admission to bail for his appearance as hereinbefore set out. The discussion of Assignment of Error No. 2 has proven the substantial insufficiency of this return in that the second warrant issued was null and of no effect, as it issued during the pendency of the hearing upon the writ of *habeas corpus* in the Supreme Court of the District of Columbia which had not been had. The discussion of Assignments of Error 3 and 5 has so disposed of the sufficiency of the indictment as matter of law that any further discussion of this assignment is unnecessary. It is submitted, therefore, that to this return the demurrer should have been sustained, that it did not contain within it facts and averments legally sufficient to warrant the action of the marshal in his conduct toward petitioner, and did not contain any legal reasons for the course of action taken; that it showed upon its face a line of conduct taken subsequent to the 11th day of June, which was unlawful, in derogation of the jurisdiction of the Supreme Court of the District of Columbia over petitioner, and in disregard of his rights under the order of continuance granted him for hearing on the merits of the writ.

Conclusion.

It is submitted that, upon all the matters raised by the Assignments of Error in this record, the Court committed serious and substantial error to the disadvantage of petitioner in the Court below and that the case should be reversed and remanded with instructions that all proceedings before the Commissioner be quashed and that petitioner's prayer for release on the original writ be granted.

Respectfully submitted,

W. B. JAYNES.

Court of Appeals, District of Columbia.

APRIL TERM, 1919. MAR 28 1919

Henry W. H. H. H.
No. 3225.

No. 2, SPECIAL CALENDAR.

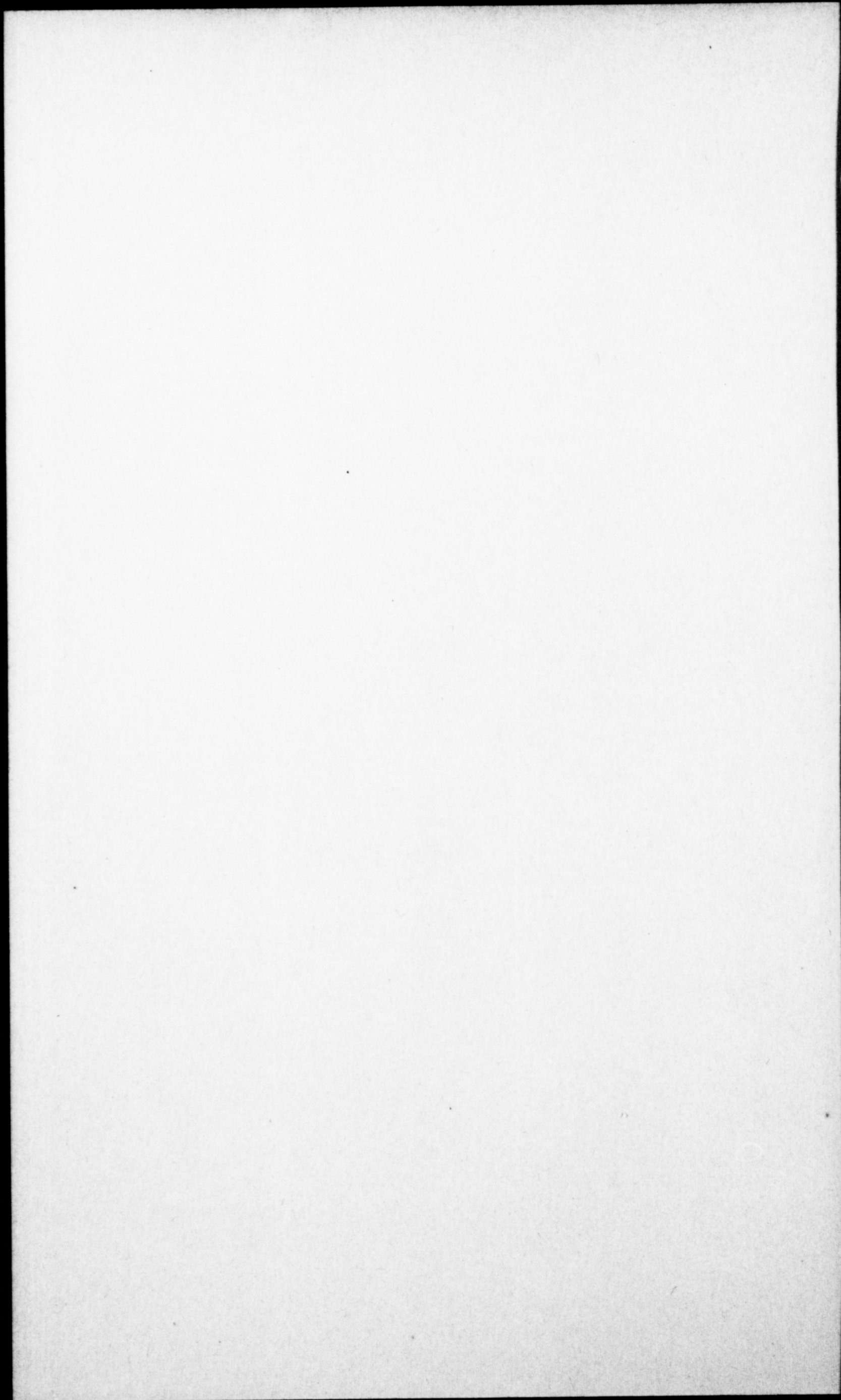
LESLIE C. STALLINGS, APPELLANT,

vs.

MAURICE SPLAIN, UNITED STATES MARSHAL IN AND
FOR THE DISTRICT OF COLUMBIA, APPELLEE.

BRIEF FOR APPELLEE.

JOHN E. LASKEY,
*Attorney of the United States in and
for the District of Columbia,
Attorney for Appellee.*



Court of Appeals, District of Columbia.

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The Case.

Any departures from the facts of the case are sufficiently cleared up by reference to the record, and take the form of conclusions, as the whole case is documentary and requires no enlargement in this brief.

ARGUMENT.

1.

The First, Second, and Sixth Assignments of Error.

The petitioner's first, second, and sixth assignments of error raise the question as to the propriety of the Commissioner's proceeding on the complaint initiated on the indictment. This is an attack, by indirection, on the right, in Federal removal and interstate rendition cases, to arrest a fugitive from justice in advance of the receipt of removal or extradition papers. The law is settled against the petitioner by the decisions in the State and Federal courts.

As early as 1807 the Supreme Court of New York, in *People vs. Schenck*, 2 Johnson, 478, held that:

“Syllabus:

“Where a person was indicted in the city of New York, for stealing a gun, and the jury found a special verdict that the gun was stolen in the State of New Jersey, and brought by the prisoner into this State, where it was found in his possession, the court said that the prisoner was entitled to his discharge; but they ordered him to be detained in prison three weeks, and notice thereof to be given to the executive of New Jersey, and if the prisoner should not be demanded within that time that he be discharged.”

Simmons vs. Commonwealth, 5 Binney, 617 (1813).

“Syllabus:

“A person who steals goods in another State, and brings them with him into this State, cannot be indicted here for the felony. He is to be treated as a fugitive from justice.”

See to the same effect:

People vs. Goodhue, 2 Johnson's Ch. Rep., 198 (1816).

Commonwealth vs. Deacon, 10 S. & R. (Pa.), 135 (1823).

State vs. Anderson, 1 Hill (S. C.), 327 (1833).

State vs. Loper, 2 Ga. Dec., 33 (1842).

State vs. Buzine, 4 Harr. (Del.), 572 (1846).

In the Matter of Fetter, 3 Zab. (N. J. L.), 311 (1852).

Morrell vs. Quarles, 35 Ala., 544 (1860).

Ex parte Romanes, 1 Utah, 23 (1867).

State vs. Taylor, 70 Vermont, 1 (1896).

The right to arrest and detain is in many States regulated by statute.

Ex parte Rosenblat, 51 Calif., 285.

Wells vs. Anderson, 52 La. Ann., 713.

Ex parte Lorraine, 16 Nev., 63.

State vs. Shelton, 79 N. C., 605, 608.

Ex parte Ammons, 34 Oh. St., 518.

State vs. Whittle, 59 S. C., 297.

See 2 Moore on Extradition, sections 591-595.

In a recent case, *Union Pacific Railroad Co. vs. Belek*, 211 Fed., 699, speaking of preliminary arrest of a fugitive from justice, to await the preparation and transmittal of extradition papers from the demanding State, the court said:

"The authority to hold a prisoner for a reasonable time for such proceedings to be instituted has been many times affirmed. See 2 Moore on Extradition, sec. 591-595. The power of the proper peace officer to make arrest, without a warrant, of a fugitive from justice, provided he has reasonable cause to believe he has committed a felony, has also been declared. State vs. Taylor, 70 Vt., 1; 39 Atl., 447; 42 L. R. A., 673; 67 Am. St. Rep., 648; State vs. Anderson, 1 Hill (S. C.), 327; In re Henry, 29 How. Prac. (N. Y.), 185; Cochran vs. Toher, 14 Minn., 385 (Gil., 293); Simmons vs. Vandyke, 138 Ind., 380; 37 N. E., 973; 26 L. R. A., 33; 46 Am. St. Rep., 411." Page 707. (Italics supplied.)

It is upon the common-law doctrine that arrest, in advance of the receipt of removal or extradition papers, is legal (People *vs.* Schenck and other cases cited, *supra*), that the practice in such cases in the District of Columbia is founded. The doctrine and the procedure alike are old in this District. In interstate rendition, a police magistrate's warrant, or a telegram or letter from an official, say in the State of California, is received here by the superintendent of police, giving information that a certain-named fugitive is charged in California with a certain offense, and requesting that he be taken into custody pending the preparation and transmittal by the governor of that State of a requisition addressed to the chief justice of the Supreme Court of the District of Columbia (section 930, Code, D. C.). The fugitive is arrested; he sues out a writ of *habeas corpus* directed to the superintendent, who brings the body of the fugitive into court and makes a written return to the writ showing the ground upon which he made the arrest; if the offense is bailable, the fugitive is admitted to bail, and this *habeas corpus* proceeding is continued to await the receipt from the government of the State of California of a requisition; when the requisition is received, it is submitted to the chief justice (sitting as the executive of the District); if it be satisfactory, he issues his warrant remanding the fugitive to the marshal of the District of Columbia, to be delivered to the agent of California, for removal to that State, there to be dealt with according to law; at this juncture, the fugitive files a *new* petition for *habeas corpus*, directed now to the marshal of the District, and a *new* writ of *habeas corpus* is allowed, under which the fugitive may challenge the sufficiency of the grounds on which the requisition is based; the method of authentication in the requisition, or his fugitivity. When the proceeding on the *requisition* is initiated, the *first* proceeding and bail given under it are *functus officio*, and at the proper time an order is entered dismissive. The matter proceeds thereafter, in the second proceeding, that is, the one based upon the requisition, to the end.

Similarly, in Federal removal, a certified copy of complaint made before a United States commissioner in, say, the district of Indiana, together with warrant, is received; complaint is made before a United States commissioner in this District, warrant issued thereon, and the fugitive arrested; the fugitive is admitted to bail by the commissioner, and the case may be continued for hearing; in the interim, if a certified copy of indictment, together with bench warrant covering the same offense, is received from the District Court of the United States for the district of Indiana, a new complaint is made before the commissioner here, based on the *indictment*, and warrant issued, and upon hearing, if the commissioner decides on the case made that the fugitive shall be removed, the commissioner issues a final mittimus; the fugitive may then sue out his writ of *habeas corpus* in the Supreme Court of the District to test the legality of the removal proceeding.

This is a more or less historical recital of the usual progress of a removal proceeding, throughout arrest, detention, *habeas corpus* and final deportation.

2.

Appellant Estopped to Question Jurisdiction of Commissioner.

Whatever objection the appellant might have made before the commissioner, based upon the pendency of the *habeas corpus* proceedings, was waived by his conduct in the case. He appeared and submitted to the jurisdiction of the Commissioner, and gave his recognizance to appear before the District Court of Wyoming (R., 16). This is not what happened in the case of *In re Farez*, 8 Fed. Cas., p. 1006, Case No. 4644, cited at page 6 of appellant's brief. Moreover, the appellant (after the foregoing submission to the jurisdiction of the commissioner) elected to complain to the lower court against the subsequent proceedings before the commissioner (R., 7) in this identical proceeding, thus

submitting to the judgment of the Supreme Court of the District of Columbia the question whether a sufficient showing was made to warrant his removal for trial in the demanding District.

Third, Fourth, and Fifth Assignments of Error.

The petitioner's third, fourth, and fifth assignments of error amount to a demurrer to the indictment on which removal is sought. But the writ of *habeas corpus* is not permitted to be used for such purpose. The rule in general terms is stated in Ruling Case Law below.

12 R. C. L., 1202.

"In some jurisdictions it is expressly provided by statute that on *habeas corpus* it is not permissible to question the correctness of the action of the grand jury in finding a bill or indictment. Where an indictment, information or complaint, though inartificially drawn, shows an evident attempt to state the essential facts which constitute the crime sought to be charged, a defect in the statement will not warrant the discharge of the defendant on *habeas corpus*. To hold otherwise would be not only to adapt the writ to the ordinary uses of a proceeding in error, but to warrant, by its means, intolerable interference with the ordinary and regular process of criminal prosecutions, and to substitute the writ for a demurrer or a motion to quash, which the law will not permit."

Ex parte Yarbrough, 110 U. S., 651, 653, 654.

"The writ of *habeas corpus* may not be converted into a writ of error, by which the errors of law committed by the court that passed the sentence may be reviewed here; for if that court had jurisdiction of the party and of the offence for which he was tried, and has not exceeded its powers in the sentence which it pronounced, this court can inquire no further.

"This principle disposes of the argument made before us on the insufficiency of the indictments under which the prisoners in this case were tried.

"Whether the indictment sets forth in comprehen-

sive terms the offense which the statute describes and forbids, and for which it prescribes a punishment, is in every case a question of law, which must necessarily be decided by the court in which the case originates, and is therefore clearly within its jurisdiction.

"Its decision on the conformity of the indictment to the provisions of the statute may be erroneous, but if so it is an error of law made by a court acting within its jurisdiction, which could be corrected on a writ of error if such writ was allowed, but which cannot be looked into on a writ of *habeas corpus limited to an inquiry into the existence of jurisdiction on the part of that court.*" (Italics supplied.)

The rule is the same when interstate rendition or Federal removal is resisted on objections to the sufficiency of complaint, information, or indictment. See:

Pearce vs. Texas, 155 U. S., 311, where an indictment, which alleged no time or place, and it did not appear where the offenses were committed, nor that they were not long since barred, was held sufficient for purpose of rendition.

As ruled in *Kohl vs. Lehlback*, 160 U. S., 293, the sufficiency of the indictment is for the court in which it is found.

The point has been settled in this court by *Webster vs. Splain*, 45 App. D. C., 567 (interstate rendition), and *Martin vs. Splain*, 46 App. D. C., 21, 27 (Federal removal). ✓

In *Martin vs. Splain*, *supra*, Federal removal was sought from this District to the Southern District of New York on an indictment charging the accused with a conspiracy to restrain and hinder foreign trade and commerce in munitions of war, by instigating strikes and walkouts among workmen employed in factories; by bribery of labor organizations, and otherwise, in violation of the act of July 2, 1890, 26 Stat., 209 (Sherman law).

The sufficiency of the indictment was attacked by six assignments of error, the scope of which is shown by quoting them:

"4. In holding that the indictment described in and accompanying the petition charges the petitioners with any offense.

"5. In holding that the said indictment is good and sufficient to put the petitioners to trial thereon.

"6. In not holding that the said indictment is so insufficient and defective as not to charge the petitioners with the offense intended and supposed thereby to be charged.

"7. In not holding the said indictment so insufficient and defective as to be in effect a nullity.

"8. In not holding the said indictment so insufficient and defective as not to warrant the removal of the petitioners for trial thereon.

"9. In holding the said indictment sufficient in either form or substance to justify the removal of the petitioners for trial thereon." (*Italics supplied.*)

The court said:

"The contention of all of the appellants is that the indictment charges no offense whatever, and for that reason the removal of the parties is not justified.

"The single question argued has been the insufficiency of the indictment, in that it charges no offense against the laws of the United States.

"The sufficiency of the indictment is to be decided in the court in which it was returned."

Martin, with the other appellants, was duly removed to New York and there tried.

A late and useful case upon the general topic involved is *Biddinger vs. Commissioner of Police*, 245 U. S., 128.

It is respectfully submitted that the good sense of this case is that the appellant was duly apprehended, identified by admission, and shown to be a defendant to an indictment found in a Federal district competent to try him for the offense charged, and that he ought to be surrendered.

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Attorney for Appellee.

